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MEETING AGENDA OF THE
TOWN COUNCIL OF THE TOWN OF FRISCO
FRISCO TOWN HALL
1 MAIN STREET
FRISCO, COLORADO 80443
JUNE 29, 2026
2:00 PM

Call to Order:
Rick Ihnken, Mayor

Roll Call:
Rick Ihnken, Elizabeth Skrzypczak-Adrian, Martin Allen, Robyn Goldstein, Andy Held, Thayer Hirsh, Dan Kibbie

Public Comments:
Public Comment is reserved for items not slated for a public hearing on the meeting' s agenda. If you plan to comment on an item already slated for a public hearing later on the meeting's agenda, please wait until that item is announced and public comment is requested at that time. State your name and address for the record, and limit comments to three minutes or less. No Council action is taken on Public Comments at Council meetings. Council takes public comments under advisement, and if a Council and/or Staff response is deemed necessary or appropriate, the individual making the comment will receive a formal response from the Town at a later date. Be sure to sign in at the Welcome Table at each meeting if providing in person Public Comment, and include contact information for follow up communication.

Mayor and Council Comments:

Staff Updates:

Consent:

Agenda Item #1: Consideration and Possible Approval of Resolution 26-16: A RESOLUTION AUTHORIZING THE MAYOR AND TOWN CLERK TO EXECUTE A CONSTRUCTION MODIFICATION ORDER WITH AD MILLER INC

New Business:

Agenda Item #1: Consideration and Possible Approval of First Reading Ordinance 26-12: AN ORDINANCE APPROVING AN ADDENDUM TO THE GROUND LEASE AGREEMENT BETWEEN THE TOWN OF FRISCO AND WEST MAIN APARTMENTS LLLP, FOR PROPERTY LOCATED AT 101 WEST MAIN STREET, FOR THE PURPOSES OF AN AFFORDABLE HOUSING DEVELOPMENT

Agenda Item #2: Consideration and Possible Approval of Termination of Ground Lease (101 West Main Street)

Agenda Item #3: Consideration and Possible Approval of the Declaration of Covenants and Plat Map for the Small Planned Community (101 West Main Street)

Agenda Item #4: Consideration and Possible Approval of Town Right of Way License for Infrastructure (101 West Main Street)

Agenda Item #5: Consideration and Possible Approval of an Agreement Regarding the Declaration of Covenants, between U.S. Bank, The Colorado Housing Finance Authority and the Town of Frisco (101 West Main Street)

Agenda Item #6: Consideration and Possible Approval of Cedar Rapids SWAP Subordination and Standstill Agreement (101 West Main Street)

Agenda Item #7: Consideration and Possible Approval of Cedar Rapids Subordination and Standstill Agreement (101 West Main Street)

Agenda Item #8: Consideration and Possible Approval of Colorado Department of Housing Landlord Estoppel (101 West Main Street)

Agenda Item #9: Consideration and Possible Approval of Agreements for a Loan from the Town of Frisco to West Main Apartments, LLLP, for the affordable housing project at 101 West Main Street, including: the Second Amended and Restated Loan Agreement, the Second Amended and Restated Promissory Note, and the Second Amended and Restated Leasehold Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Leases (101 West Main Street)

Agenda Item #10: Consideration and Possible Approval of a Forward Purchase Agreement between the Town of Frisco and West Main Apartments LLLP for the purchase of a commercial unit (101 West Main Street)

Agenda Item #11: Consideration and Possible Approval of Assignment and Assumption of Second Amended & Restated Development Agreement (101 West Main Street)

Adjourn:

Estimated Start Times for items are estimates only - it is recommended to arrive early if there is a particular item of interest on the Agenda, should the Council be running ahead of schedule. Town Council Agendas can legally be amended up until 24 hours prior to the beginning of the scheduled meeting.

Questions: Stacey Campbell, Town Clerk | townclerk@townoffrisco.com | (970)668-5276

MEMORANDUM

P.O. BOX 4100 FRISCO, COLORADO 80443

TO: **MAYOR AND TOWN COUNCIL**

FROM: **JOSEPH SCHLEIFER, PROJECTS AND FACILITIES MANAGER**
JOSH SOUTHWORTH, PUBLIC WORKS DIRECTOR

RE: **PIONEER PARK CONSTRUCTION AGREEMENT CHANGE ORDER**

DATE: **June 29, 2026**

Summary Statement: The Pioneer Park project advances the 2019 Neighborhood Parks Master Plan and incorporates Town Council direction and community feedback received through SCJ Alliance's design and engagement process. Council approved an agreement with AD Miller for a reduced scope that allowed the core park improvements to proceed while deferring the restroom until additional funding and final design could support its inclusion.

Finance has since secured additional Department of Local Affairs (DOLA) Strong Communities funding and Colorado Water Conservation Board (CWCB) grant funding, and reduced requirements within Capital Vehicle and Equipment purchases bringing total funding available for the project to $1,845,294.21. AD Miller has provided pricing that enables the restroom to be constructed with the original park scope. Staff now finds the available funding and current project scope to be aligned.

AD Miller plans to begin construction on July 13, 2026, and achieve substantial completion by August 31, 2026. The August 31 deadline is required by the DOLA Strong Communities Grant. Approval of the proposed change order will allow the Town to deliver the complete project within the grant schedule.

Background: In 2019, the Town Council adopted the Neighborhood Parks Master Plan to guide future investment in parks, open space, and recreational facilities. The plan identified a need to revitalize Pioneer Park and proposed a conceptual vision for improvements. Community feedback gathered through the planning process identified the following existing concerns:

- Lack of public visibility and signage
- Unclear status of tennis courts (public vs. private perception)
- General lack of maintenance and defined purpose

In 2024, the Town of Frisco was awarded a DOLA Strong Communities Grant to support infrastructure associated with the 54-unit workforce housing project at 602 Galena Street, with a portion of the funding allocated to Pioneer Park improvements. Pioneer Park, located at 6th Avenue and Galena Street, currently includes two public tennis courts but lacks amenities such as restrooms, play features, signage, and formal circulation. The park improvements will serve the broader community and provide an important amenity for residents of the 602 Galena workforce housing project.

The project is intended to revitalize Pioneer Park through expanded uses, features for a variety of ages, improved connectivity and circulation, signage, site amenities, and a restroom facility with flushable toilets. In June 2025, the Town selected SCJ Alliance through a competitive request for proposals process to lead community engagement and design. Council and community direction were incorporated into the design, and the project was advertised for construction proposals in March 2026.

When staff presented the project to Council on 14 April 2026, staff stated that it planned to return with a change order if additional funding became available and the restroom could be incorporated while meeting the requirements of the project. Council subsequently approved the AD Miller construction agreement for a reduced scope that excluded the restroom.

Finance has now secured additional DOLA Strong Communities and CWCB grant funding, SCJ Alliance has completed the design, and AD Miller has provided updated pricing. Staff therefore view the available funding and current project scope as aligned. The proposed change order restores the restroom to the project and enables construction of the original scope within the required grant schedule.

Financial Impact: The existing AD Miller construction agreement is $1,357,527.29. Additional DOLA Strong Communities funding and CWCB grant funding and reduced requirements within Capital Vehicle and Equipment purchases bringing total funding available for the project to $1,845,294.21.

The change order will be funded from available project funding, and staff reviewed the available funding and current scope and find them aligned.

Alignment with Strategic Plan: The Town's vision is to be a "welcoming mountain town that connects people with nature and supports opportunities for community well-being." The Pioneer Park project advances this vision by improving and revitalizing the park with expanded recreational opportunities, multigenerational amenities, a public restroom, and better connectivity to the Town's network of pathways and park facilities. The project also supports Council's strategic objective to provide inclusive culture, arts, and recreation opportunities for the community, including residents of the 602 Galena workforce housing project.

Environmental Sustainability: AD Miller has a clear approach to constructing within an environmentally sensitive project area that includes existing landscaping, mature tree cover, and delineated wetland areas. Their plan incorporates protective measures to minimize disturbance to these features, allowing construction activities to proceed while avoiding potential impacts to sensitive areas. This approach is intended to preserve the site’s natural setting, ensuring that upon project completion, the park remains a key Town space for both residents and visitors, while maintaining its “hidden” park aesthetic.

Staff Recommendation:

Staff recommends Council approve the proposed change order to the AD Miller construction agreement in the amount of **$487,766.92** to add the restroom and complete the original Pioneer Park project scope of $1,357,527.29 for a final cost with revision changes of $1,845,294.21. Approval will allow AD Miller to begin work on July 13, 2026, and pursue substantial completion by the August 31, 2026, DOLA Strong Communities Grant deadline.

Reviews and Approvals:

- Josh Southworth, Public Works Director
- Leslie Edwards, Finance Director
- Diane McBride, Deputy Town Manager
- Tom Fisher, Town Manager

Attachments:

- Attachment 1 – Proposed Change Order to AD Miller Construction Agreement
- Attachment 2 – AD Miller Updated Pricing
- Attachment 3 – Restroom Construction Drawing
- Attachment 4 – Resolution 26-16

TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
RESOLUTION 26-16

A RESOLUTION AUTHORIZING THE MAYOR AND TOWN CLERK TO EXECUTE A CONSTRUCTION MODIFICATION ORDER WITH AD MILLER INC.

WHEREAS, the Town Council has prioritized improvements to the park known as Pioneer Park as identified in the 2019 Neighborhood Parks Master Plan; and

WHEREAS, in accordance with Chapter 9 of the Frisco Town Code, staff solicited a modification order to include the construction of a restroom within the improvements of Pioneer Park; and

WHEREAS, the Capital Fund has sufficient sums of money to cover the contract amount that has been proposed for award; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THAT:

The Mayor and Town Clerk are hereby authorized to execute any and all documents necessary to the attached Construction Modification Order for the Pioneer Park Design with AD Miller, Inc., at a cost, as set forth therein, not to exceed ONE MILLION EIGHT HUNDRED AND FORTYFIVE THOUSAND TWO HUNDRED AND NINETY FOUR DOLLARS AND TWENTY ONE CENTS ($1,845,294.21).

INTRODUCED, READ, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THIS 29TH DAY OF JUNE, 2026.

TOWN OF FRISCO:

____
Frederick J. Ihnken, Mayor

ATTEST:

____
Stacey Campbell, Town Clerk

CONTRACT MODIFICATION ORDER

Date: 29 June	Change Order Number: 001

Contractor: A.D. Miller

Change Order Title: Pioneer Park Restroom

Project Number/Name: Pioneer Park Update

Description:
Your contract is hereby modified to include the following:
Breakout of New Scope Items (included in line item above)
1) Restroom $250,150.01
2) Mechanical Restroom Allowance $38,212.27
3) Plumbing Restroom Allowance $65,418.94
4) Electric Restroom Allowance $35,463.83
5) Sewer $73,728.70
6) 100% CD Changes- Civil/Landscape $14,776.59
7) Boulder Niche Seats $41,374.46
8) Flood Protection $13,970.09
9) De-scoped Items (changes with restroom) ($45,327.97)

Attachments:

Original Contract Price:$1,357,527.29

Net Changes from Previous Change Orders:0

Contract Price prior to this Change Order:0

Net Increase (Decrease) of this Change Order:$1,357,527.29

Contract Price with this Change Order: $1,845,294.21

Original Contract Times:
Substantial Completion: 31 August 2026
Final Completion: 1 December 2026

Contract Times prior to this Change Order:
Substantial Completion:
Final Completion

Contract Times with this Change Order:
Substantial Completion: 31 August 2026
Final Completion: 1 December 2026

Approved by Contractor:

By:______________________ Title:______________________ Date:________________

Approved by Owner:

By:______________________ Title:______________________ Date:________________

A. D. Miller
Building on Higher Ground

7006 S. ALTON WAY, BLDG. E, SUITE 100
CENTENNIAL, CO 80112
TEL: (303) 221-7770 FAX: (303) 221-7774
ADMILLERINC.COM

TO: **Town of Frisco**
102 School Road
Frisco, CO 80443
ATTN: **Josh Southmoor**

DATE: **6.25.26**
Proj: **Pioneer Park**
Add: **5th Avenue Frisco, CO 80443**

JOB NO: **26016**

A. D. Miller Services, Inc. is pleased to present to you the following budget pricing based on the following :
civil and landscape plans dated 6.9.26 by SCJ Alliance and architectural plans dated 6.2.26 by Allen-Guerra

Div #	Division Description		Amount
01	General Conditions	$	152,402.83
02	Existing Conditions		120,220.50
03	Concrete		80,662.60
04	Masonry		14,696.00
05	Steel		3,000.00
06	Carpentry		164,413.97
07	Thermal & Moisture Protection		38,318.80
08	Openings - Doors & Windows		32,151.33
09	Finishes		16,057.00
10	Specialties		21,265.00
11	Equipment (Playground)		322,029.00
22	Plumbing		66,950.00
23	HVAC		32,325.00
26	Electrical		42,445.00
27	Communications		-
28	Electronic Safety & Security		-
31	Earthwork		44,783.00
32	Exterior Improvements		464,182.75
33	Utilities		61,824.00
	SUBTOTAL:	**$**	**1,677,726.78**

A.D. Miller Overhead and Profit	$	119,234.77
Building Permit & Fees	$	-
Liability Insurance	$	25,550.31
Builders Risk Insurance	$	4,258.38
Performance and Payment Bond Fee	$	18,523.97
Construction Contingency		Not included

INITIAL CONTRACT CONSTRUCTION COST:	$ 1,357,527.29	
REVISION SCOPE CHANGE COST :	$ 487,766.92	
FINAL COST *with revision changes* :		**$ 1,845,294.21**

Breakout of New Scope Items *(included in line item above)*

1)	Restroom			$	250,150.01
2)	Mechanical Restroom Allowance			$	38,212.27
3)	Plumbing Restroom Allowance			$	65,418.94
4)	Electric Restroom Allowance			$	35,463.83
5)	Sewer			$	73,728.70
6)	100% CD Changes- Civil/Landscape			$	14,776.59
7)	Boulder Niche Seats	*See attached sheet with options*	***Allowance***	$	41,374.46
8)	Flood Protection			$	13,970.09
9)	De-scoped Items (changes with restroom)			$	(45,327.97)

Alternates

1)	Spray foam under slab ILO rigid insulation		ADD	$	3,431.72
2)	Barricade Thermo Brace at Roof ILO Gypsum Board	*Still waiting on pricing*		$	-

CLARIFICATIONS:

01 - General Conditions

1) *Cost based on Standard AIA 401 Contract. GMP contract can be provided upon request.*
2) *Budget excludes winter / weather conditions.*
3) *Proposal includes Worker Comp, Liability Insurance, and Performance Bond Fee. Builders Risk is excluded.*
4) *Allowances as specified above and within SOV documents.*
5) *All municipal, utility company and tap fees, permit and use tax, if applicable, are the responsibility of the owner. ADM to assist in*
6) *The cost of third party engineering, inspections and testing are the responsibility of the owner. Comcast, Century Link and Xcel*
7) *Excludes any and all abatement, pest relocation, and environmental remediation.*
8) *Material and labor costs are based upon current market pricing. Due to market volatility, material is subject to increases without notice.*
9) *Budget assumes temporary utility service fees are paid by owner.*
10) *This proposal is subject to change based on unknown items that may occur as result of Market Disruptions or Government Intervention such as material delays, labor shortages, tariff mandates, COVID-19, or global events. Manufacturers and production facilities are feeling the impacts of decreasing international imports, health and safety concerns and economic impacts to their businesses. As a result, manufacturing production may be impacted. Therefore, lead times and production may be extended without warning and pricing may be affected. Known projects with critical completion schedules should be coordinated between the contractor and the owner, should an event occur.*

02 - Existing Conditions

1) *Traffic control & existing valve investigation*

03 - Concrete

1) *Budget assumes no underground piping will need to be encased in concrete.*
2) *Budget assumes concrete will not be poured between <<<<>>>> to avoid additional fees.*

04 - Masonry

1) *Priced as local approved cultured stone flats with sill. Includes 6" stone veneer below grade.*

05 - Metals

1) *Proposal assumes structural steel to be shop prime painted with no intumescent firestopping. All exposed steel is painted in the field.*
2) *Flashing at base of precast panels is not included, as is not standard practice for precast wall assemblies.*

07 - Thermal and Moisture Protection

1) *24 gauge standing seam metal roof in standard color, single lock mechanically seamed with vent dripedge, fascia,vented ridge, valley and gable metal with S-5 snow guard. Does not include gutter or downspouts.*

08 - Openings

1) *Install 3 doors, frames and hardware in restrooms*
2) *Polycarbonate transom door lites.*
3) *Includes (3) panel door dry flood protection system. Mount on trim. Excludes sealed shop drawings, sealed engineering report, dry flooproofing certification, emergency action/flood maintenance plan, onsite flood deployment training.*

09 - Finishes

1) *Proposal includes an allowance for Sealants and caulking to include: dissimilar materials, site caulking and joints, and firestopping.*
2) *Epoxy floor and 4" cove base in restrooms. Deco Flake One Resuflor 3746 body coat, Resuflor MVB primer, and Accelera 4850 polyaspartic grout coat and topcoat. This product is different chemicals from Visitor Center but should work better for cleaning.*
3) *Assumed 1/2" cement board at restroom interior walls and ceilings.*

10 - Specialties

1) *Priced as Bobrick/Bradley mirrors, grab bars, (3) roll toilet paper dispenser, sanitary napkin dispensers, non battery soap dispenser, coat hooks, surface mounted waste receptacles, Koala changing stations and 5 quart needle disposal box. Hand dryers priced as Xlerator*
2) *Priced as MDC white gloss FRP in restroom walls and ceilings.*

22 - Plumbing

1) *Proposal includes a CPVC / PEX system with PVC underground, waste and drains. Site stormwater underground is HDPE as specified.*
2) *Priced as (2) Carrier wall mounted toilet & lavs, (3) floor drains, Elkay EZLSSN-EDFPBMV117K high low bottle filler drinking fountain, backflow preventor, 40 gallon EWH with epxansion tank, (1) mop sink, (1) hose bibb,*

23 - Heating, Ventilating, and Air Conditioning (HVAC)

1) *Allowance for (3) cove EUH in each room and (1) ERV with 6" ducting in mechanical room.*
2) *No pricing included for radiant heat flooring per RFI 1*

26- Electrical

1) *Electrical boxes mounted on the exterior are surface mounted and not embedded into precast panels.*
2) *Allowance for restroom can lights/surface mount lights, power, raceways for access controls, door opener, motion sensors. Timer for Efs, heat trace for drain, connection for electric hand dryers.*

28 - Electronic Safety and Security

1) *Pricing includes rough in for access controls but excludes Verkada equipment per RFI 1.*

31 - Earthwork

1) *Budget excludes hard rock excavation and dewatering. Should AD Miller encounter hard rock or water during earthwork additional costs to be negotiated through change order process.*
2) *Please note: Proposal assumes on site soil is suitable for structural fill, and has assumed spoils need to be exported from the site and there is no nearby borrow site.*

32 - Exterior Improvements

1) *A.D. Miller is carrying a $35,000.00 Boulder Allowance for site boulders with seating niche. A.D. Miller has attached some examples for providers review for approval prior to construction. (See attached for description and additional information.)*

33 - Utilities

1) *Please note, no existing utilities were shown on the Civil Plan. We will need to complete locates and survey onsite to ensure Sewer Line Profile/Depth/Location are accurate. Pricing is based on drawing assumptions only.*

Niche Boulder Seat Pricing Options

Pioneer Park- Frisco

	Lyons Sandstone- Estes Park	Pine Stone- GWS	Siloam Stone- Co Springs	Perfect Boulders- Parker	Miracle Play Systems
Notes	Priced as generic no specific boulder bench. Does not match boulder size specified in plans. Shape can be changed.	Photos of boulders to be used in seats. Hand scultped niche seats. Assume 6-8 weeks of carving. Can't start scultping until August so September installation on site. Includes transportation to site. If ordered in June.	So the niche seats are granite boulders. We do not carry granite boulders nor do we fabricate at the quarry. We also do not provide installation services, we are a sandstone quarry material supplier only.We can provide a quote for the sandstone blocks for the seat wall. Based on a previous quote it looks like you would need 128 lin. feet of the blocks.	Boulders to be supplied by Town of Frisco and fabricated in Parker CO. Hand scultped. Unable to source boulders the size required.	Custom Made Concrete Formed- Aoemba shaped, with 2' seating area Max PART SIZE; 66" wide, 48" deep, 66" tall (4" being below grade). Slightly smaller than shown on the elevation, but similar to the photo in the plans. 16 week lead time post submittal approval.
Price for all 3 boulders	$18,000-25,000	$62,000-71,300	$35,000- boulder only- no fabrication	$86,000-98,900	$86,000-$96,000
					See photo in plans.
					
					

PIONEER PARK

RESTROOM STRUCTURE

GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK B

FRISCO . COLORADO

NOTE: RENDERING FOR PRESENTATION PURPOSES ONLY.

REVIEW

16 JUNE 2026

ALLEN-GUERRA
ARCHITECTURE

CRESTED BUTTE . COLORADO
T: 970 . 251 . 5422
WWW.ALLEN-GUERRA.COM

ALLEN-GUERRA
CRESTED BUTTE
BENJAMIN HENSON . ARCHITECT

ALLEN-GUERRA ARCHITECTURE
201 D ELK AVENUE
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CRESTED BUTTE . COLORADO . 81224
PH: 970 . 251 . 5422
E-MAIL: BEN@ALLEN-GUERRA.COM
WEB SITE: WWW.ALLEN-GUERRA.COM

PRELIMINARY - NOT FOR CONSTRUCTION

PIONEER PARK
GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK B
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE
COVER SHEET

ISSUE	DATE
REVIEW	16 JUN 2026

PROJECT# 2511

CS

ARCHITECTURAL ABBREVIATIONS

AFF	ABOVE FINISHED FLOOR	EL OR ELEV	ELEVATION	LAB	LABORATORY	SAN	SANITARY
ACOUS	ACOUSTICAL	ENGR	ENGINEER	LAM	LAMINATE(D)	SECT	SECTION
ADD	ADDENDA, ADDENDUM	EQ	EQUAL	LAV	LAVATORY	SEW	SEWER
ADJ	ADJACENT	EST	ESTIMATE	LT	LIGHT	SHT	SHEET
AGGR	AGGREGATE	EXC	EXCAVATE	LVT	LUXURY VINYL TILE	SVF	SHEET VINYL FLOORING
ALT	ALTERNATE	EXIST	EXISTING	MFG	MANUFACTURER	SHLV	SHELV(ES) (ING)
ALUM	ALUMINUM	EJ	EXPANSION JOINT	MATL	MATERIAL	SDG	SIDING
APPD	APPROVED	EXT	EXTERIOR	MO	MASONRY OPENING	SIM	SIMILAR
APPROX	APPROXIMATE	EXP	EXPOSED	MTL	METAL	SL	SLIDING
ARCH	ARCHITECT(URAL)	FAB	FABRICATE	MAX	MAXIMUM	STC	SOUND-TRANSMISSION CLASS
ASAP	AS SOON AS POSSIBLE	FO	FACE OF	MECH	MECHANICAL CONTRACTOR		
BBR	BASEBOARD RADIATION	FIN	FINISH			SPEC	SPECIFICATION
BM	BEAM	FP	FIREPROOF	MED	MEDIC(INE) (AL)	SQ	SQUARE
BRG	BEARING	FPL	FIREPLACE	MIN	MINIMUM	SF	SQUARE FEET
BFF	BELOW FINISHED FLOOR	FIXT	FIXTURE	MISC	MISCELLANEOUS	SS	STAINLESS STEEL
BET	BETWEEN	FLR	FLOOR	NEC	NATIONAL ELECTRIC CODE	STD	STANDARD
BLK	BLOCK	FLG	FLOORING	NOM	NOMINAL	STL	STEEL
BSMT	BASEMENT	FD	FLOOR DRAIN	NIC	NOT IN CONTRACT	STRUCT	STRUCTURAL
BTU	BRITISH THERMAL UNIT(S)	FT	FOOT, FEET	N/A	NOT APPLICABLE	SUB	SUBSTITUTE
BD	BOARD	FTG	FOOTING	NTS	NOT TO SCALE	SUPPL	SUPPLEMENT
BS	BOTH SIDES	FDN	FOUNDATION	OC	ON CENTER	S4S	SURFACED FOUR SIDES
BO, B/	BOTTOM OF	FURN	FURNISH	OPG	OPENING	SUSP	SUSPEND(ED)
BLDG	BUILDING	GAL	GALLON	ORN	ORNAMENTAL	TEL	TELEPHONE
CAB	CABINET	GA	GAUGE	OPH	OPPOSITE HAND	TV	TELEVISION
CL	CENTER LINE	GALV	GALVANIZED	OD	OUTSIDE DIAMETER	TEMP	TEMPERED
CLG	CEILING	GC	GENERAL CONTRACTOR	PBR	PABST BLUE RIBBON	THK	THICK
CER	CERAMIC	GL	GLASS, GLAZED	PTN	PARTITION	TLT	TOILET
CLO	CLOSET	GLB	GLU-LAM BEAM	d	PENNY (NAILS, ETC)	T&G	TONGUE & GROOVE
CLD	CLOTHES DRYER	GR	GRADE	PERF	PERFORATE(D)	T&B	TOP & BOTTOM
CLW	CLOTHES WASHER	GYP	GYPSUM	PERP	PERPENDICULAR	TO, T/	TOP OF
COL	COLUMN	GWB	GYPSUM WALLBOARD	PLAST	PLASTER	TR	TREAD
CONC	CONCRETE	HDW	HARDWARE	PLAS	PLASTIC	TYP	TYPICAL
CJ	CONSTRUCTION JOINT	HD	HEAD	PL	PLATE	UG	UNDERGROUND
CONT	CONTINUOUS	HVAC	HEATING, VENTING, AND AIR CONDITIONING	PLEX	PLEXIGLASS	UNGL	UNGLAZED
COORD	COORDINATE			PLMB	PLUMBING	UNFIN	UNFINISHED
CPT	CARPET	HORIZ	HORIZONTAL	PLYWD	PLYWOOD	UNO	UNLESS NOTED OTHERWISE
CTR	COUNTER	HP	HORSEPOWER	PROJ	PROJECT	VIF	VERIFY IN FIELD
C/S	COUNTER SINK	HB	HOSE BIBB	PROP	PROPERTY	VERT	VERTICAL
CF	CUBIC FEET	HW	HOT WATER HEATER	QT	QUARRY TILE	VCT	VINYL COMPOSITION TILE
DP	DAMP PROOFING	HT	HEIGHT	QTY	QUANTITY	V	VOLT
DEPT	DEPARTMENT	IBC	INTERNATIONAL BUILDING CODE	R	RADIUS	WH	WATER HEATER
DTL	DETAIL			RD	ROOF DRAIN	WC	WATER CLOSET
DIA, O /	DIAMETER	INCL	INCLUDE(D) (ING)	RM	ROOM	WP	WATERPROOF
DIM	DIMENSION	INFO	INFORMATION	RS	ROUGH SAWN	WT	WEIGHT
DW	DISHWASHER	INSP	INSPECTOR, INSPECTION	REC	RECESSED	WWF	WELDED WIRE FABRIC
DN	DOWN	ID	INSIDE DIAMETER	RCB	RESILIENT COVE BASE	WF	WIDE FLANGE
DR	DRAIN	INSUL	INSULATION	RW	RETAINING WALL	WDW	WINDOW
DWG	DRAWING	INT	INTERIOR	REFR	REFER OR REFERENCE	W/	WITH
EA	EACH	IRC	INTERNATIONAL RESIDENTIAL CODE	REF	REFRIGERATOR	W/O	WITHOUT
EW	EACH WAY			REINF	REINFORCE(D)	WD	WOOD
ELECT	ELECTRICAL	JT	JOINT	REBAR	REINFORCING BAR(S)	WKG	WORKING
EC	ELECTRICAL CONTRACTOR	JST	JOIST	RESIL	RESILIENT		
		JCT	JUNCTION	REQD	REQUIRED		
		KWH	KILOWATT HOUR	R	RISER		
				RO	ROUGH OPENING		

ARCHITECTURAL SYMBOLS

NEW 87.5 (EXIST 67.1) — SPOT ELEVATION
TB3 — TEST BORING
T / PLYWD EL = 120'-8" — TOP OF ELEVATION
NEW CONTOUR
EXISTING CONTOUR
OLD CONTOUR
CENTERLINE
HIDDEN LINE (ABOVE) (8")
HIDDEN LINE (BELOW) (4")
SETBACK LINE
PROPERTY LINE
BREAK LINE
3 / A4.1 — DETAIL NUMBER / SHEET NUMBER
3 / A4.1 — BUILDING OR WALL SECTION / SHEET NUMBER
127 KITCHEN — ROOM NUMBER / ROOM NAME
A — WINDOW TYPE
3 — DOOR TYPE
INT-46 — INTERIOR ELEVATION(S) / SHEET NUMBER
3 — REVISIONS

PLAN AND SECTION MATERIAL SYMBOLS

EARTH
- COMPACTED FILL
- POROUS FILL
- UNDISTURBED FILL
- ROCK

METAL
- STEEL

MASONRY
- CONCRETE BLOCK
- BRICK
- STONE
- GLASS BLOCK

WOOD
- FINISH
- ROUGH/DIMENSION LUMBER
- BLOCKING
- OR GLU-LAM
- PLYWOOD

INSULATION
- FOAM
- BATT
- RIGID

CONCRETE
- CAST
- LIGHTWEIGHT CONCRETE

GENERAL NOTES

A. CONTRACTOR'S RESPONSIBILITIES
1. THE CONTRACTOR SHALL VERIFY THAT THE BUILDING CODE REQUIREMENTS, AS ADOPTED BY THE LOCAL MUNICIPALITY, HAVE BEEN MET. ALL WORK CONTAINED WITHIN THESE DOCUMENTS SHALL CONFORM TO ALL CODES, REGULATIONS, ORDINANCES, LAWS, PERMITS, & CONTRACT DOCUMENTS WHICH APPLY.
2. THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL PERMITS, INSPECTIONS, LICENSES, AND APPROVALS ASSOCIATED WITH THIS PROJECT.
3. THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING ALL EQUIPMENT SIZES AND LOCATIONS WITH MECHANICAL, PLUMBING, ELECTRICAL, AND UTILITY COMPANIES.
4. THE CONTRACTOR IS RESPONSIBLE FOR COORDINATION OF FIRE MITIGATION REQUIREMENTS WITH THE MUNICIPALITY AND FOREST SERVICE.
5. THE CONTRACTOR MUST VERIFY THE BUILDING LAYOUT WITH THE OWNER AND/OR ARCHITECT PRIOR TO DIGGING THE FOOTINGS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE ACCURATE PLACEMENT OF ALL NEW CONSTRUCTION ON THE SITE.
6. THE CONTRACTOR MUST VERIFY THAT ALL DOORS, WALLS, AND CEILINGS BETWEEN GARAGE AND LIVING SPACES CONFORM TO ALL FIRE AND SAFETY CODES AND REGULATIONS.
7. THE CONTRACTOR IS RESPONSIBLE FOR LOCATING AND VERIFYING ALL FINISH GRADES ON SITE.
8. THE CONTRACTOR MUST VERIFY THAT FIREPLACE AND/OR WOOD STOVE INSTALLATION COMPLIES WITH ALL LOCAL, STATE, AND NATIONAL FIRE SAFETY CODES AND REGULATIONS.
9. CONTRACTOR SHALL SUBMIT A LIST OF SUBCONTRACTORS TO THE ARCHITECT PRIOR TO COMMENCEMENT OF CONSTRUCTION.
10. THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING ALL EXISTING CONDITIONS PRIOR TO COMMENCEMENT OF CONSTRUCTION.
11. THE CONTRACTOR AND HIS/HER SUBCONTRACTORS ARE RESPONSIBLE FOR COMPLETING ALL THE WORK WITHIN THESE DOCUMENTS, UNLESS NOTED OTHERWISE.
12. CONTRACTOR TO PROVIDE SMOKE DETECTORS & CARBON MONOXIDE DETECTORS IN ACCORDANCE WITH LOCAL APPLICABLE CODES.
13. CONTRACTOR TO PROVIDE ALL NECESSARY BLOCKING, BACKING, AND FRAMING FOR LIGHT FIXTURES, ELECTRICAL UNITS, AC EQUIPMENT, RECESSED ITEMS, AND ALL OTHER ITEMS AS REQUIRED.
14. CONTRACTOR TO PROVIDE ALL NECESSARY FIRE BLOCKING, AS REQ'D, INCLUDING BUT NOT LIMITED TO, WITHIN INTERIOR OF UNIT WALLS WHERE HORIZONTAL FIRE BLOCKING IS REQUIRED AT INTERVALS NOT EXCEEDING 10 FEET; AT CONCEALED SPACES BETWEEN STAIR STRINGERS AT THE TOP AND BOTTOM OF EACH STAIR RUN; AND AT FLOOR/CEILING ASSEMBLY OPENINGS FOR VENTS, PIPES, DUCTS, CABLES, WIRES, ETC.
15. ALL MATERIALS STORED ON THE SITE SHALL BE PROPERLY STACKED AND PROTECTED TO PREVENT DAMAGE AND DETERIORATION. FAILURE TO PROTECT MATERIALS MAY BE CAUSE FOR REJECTION OF WORK.
16. PROVIDE ALL ACCESS PANELS AS REQUIRED BY GOVERNING CODES TO ALL CONCEALED SPACES, VOIDS, ATTICS, ETC. VERIFY TYPE REQUIRED WITH ARCHITECT PRIOR TO INSTALLATION IF NOT NOTED ON PLANS.
17. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PREPARING THE DRAWINGS AND OBTAINING THE PERMITS FOR THE FIRE SPRINKLER SYSTEM. SYSTEM SHALL MEET THE REQUIREMENTS OF ALL APPLICABLE CODES AND ORDINANCES, IF FIRE PROTECTION IS REQUIRED. ALL SHOP DRAWINGS SHALL BE REVIEWED BY THE ARCHITECT.
18. NO PORTION OF THE WORK REQUIRING A SHOP DRAWING OR SAMPLE SUBMISSION SHALL BE COMMENCED UNTIL THE SUBMISSION HAS BEEN REVIEWED BY THE ARCHITECT AND ENGINEER. ALL SUCH PORTIONS OF THE WORK SHALL BE INSTALLED IN ACCORDANCE WITH REVIEWED SHOP DRAWINGS AND SAMPLES.
19. THE CONTRACTOR SHALL CONFINE HIS/HER OPERATIONS ON THE SITE TO AREAS PERMITTED BY THESE DOCUMENTS AND THE PROPERTY OWNERS ASSOCIATION, IF APPLICABLE.
20. THE JOB SITE SHALL BE MAINTAINED IN A CLEAN, ORDERLY CONDITION, FREE OF DEBRIS AND LITTER, AND SHALL NOT BE UNREASONABLY ENCUMBERED WITH ANY MATERIALS OR EQUIPMENT. EACH SUB-CONTRACTOR IMMEDIATELY UPON COMPLETION OF EACH PHASE OF HIS/HER WORK SHALL REMOVE ALL TRASH AND DEBRIS AS A RESULT OF HIS/HER OPERATION.
21. THE GENERAL CONTRACTOR AND OWNER ARE RESPONSIBLE FOR RADON TESTING IN THE FIELD & MUST INSTALL ALL NECESSARY EQUIPMENT TO PREVENT RADON BUILD-UP WITHIN THE STRUCTURE.
22. MOISTURE IS THE PREVALENT CAUSE OF MOLD GROWTH. GENERAL CONTRACTORS & SUBCONTRACTORS ARE TO BE PROACTIVE IN THE MITIGATION OF MOISTURE DURING CONSTRUCTION. "TIGHT BUILDING" CONSTRUCTION IS ONE OF THE IMPLICATED CAUSES OF MOLD. ALL ROOFS, CRAWL SPACES, & OTHER UNCONDITIONED SPACES ARE TO BE VENTILATED ADEQUATELY. IF EXCESSIVE MOISTURE IS NOTICED DURING CONSTRUCTION, THE ARCHITECT IS TO BE NOTIFIED IMMEDIATELY. ANY MODIFICATION TO THE PLANS REGARDING MOISTURE CONTROL DURING CONSTRUCTION SHALL BE REVIEWED BY THE ARCHITECT.

B. CHANGES TO THE DESIGN
1. CHANGES OR SUBSTITUTIONS TO THE DESIGN OR TO PRODUCTS WHICH WERE SPECIFIED IN THESE DOCUMENTS WILL ONLY BE ALLOWED WITH WRITTEN APPROVAL FROM THE OWNER AND/OR ARCHITECT, AND FROM THE ARCHITECTURAL REVIEW BOARD, IF APPLICABLE.

C. STRUCTURAL CHANGES
1. ANY CHANGES IN THE FIELD TO THE STRUCTURAL PLANS SHALL RELIEVE THE ARCHITECT AND STRUCTURAL ENGINEER OF ANY CONSEQUENCES WHICH MAY ARISE. ANY PROPOSED CHANGES TO THE STRUCTURAL DOCUMENTS MUST BE APPROVED BY THE ARCHITECT AND STRUCTURAL ENGINEER IN WRITING.

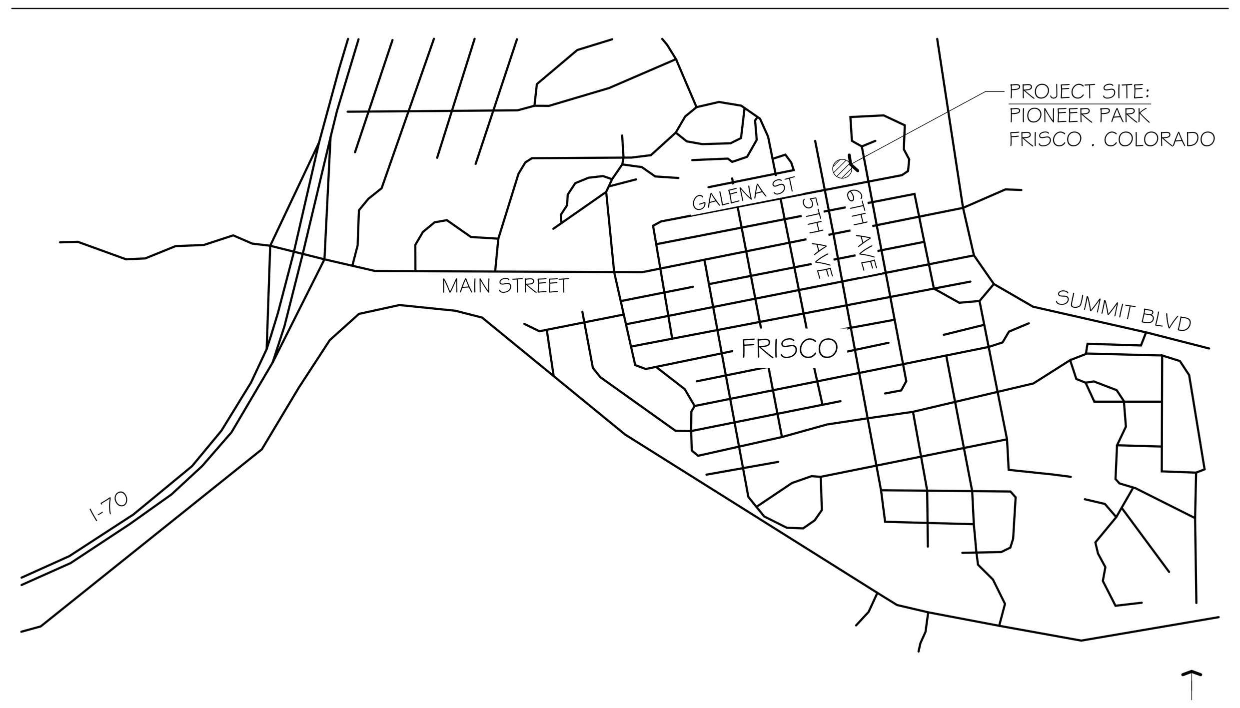
D. DISCREPANCIES
1. ANY DISCREPANCIES FOUND WITHIN THESE DOCUMENTS SHALL BE REPORTED TO THE ARCHITECT IMMEDIATELY. ANY FAILURE TO REPORT DISCREPANCIES SHALL RELIEVE THE ARCHITECT OF ANY CONSEQUENCES WHICH MAY ARISE.
2. SHOULD A CONFLICT OCCUR IN OR BETWEEN DRAWINGS AND SPECIFICATIONS, THE SPECIFICATIONS SHALL TAKE PRECEDENCE. UNLESS A WRITTEN DECISION FROM THE ARCHITECT HAS BEEN OBTAINED WHICH DESCRIBES A CLARIFICATION OR ALTERNATE METHOD AND/OR MATERIALS.

E. DIMENSIONS
1. DIMENSIONS:
   - -ALL DIMENSIONS SHALL TAKE PRECEDENCE OVER SCALE OF DRAWINGS. DRAWINGS SHOULD NEVER BE SCALED.
   - -ALL DIMENSIONS ARE TO FACE OF STUD UNLESS NOTED OTHERWISE.
   - -CEILING HEIGHT DIMENSIONS ARE FROM FINISH FLOOR TO FACE OF FINISH CEILING MATERIAL, UNLESS NOTED OTHERWISE.
2. ALL EXTERIOR WALLS TO BE 2x6 STUD WALLS (5 1/2") UNLESS NOTED OTHERWISE.
3. ALL INTERIOR WALLS TO BE 2x6 STUD WALLS (5 1/2") UNLESS NOTED OTHERWISE.
4. WHERE LARGER STUDS OR FURRING ARE INDICATED ON DRAWINGS TO COVER PIPING AND CONDUITS, THE LARGER STUD SIZE OR FURRING SHALL EXTEND THE FULL SURFACE OF THE WALL WIDTH AND LENGTH WHERE THE FURRING OCCURS.

SITE NOTES

1. AN EXISTING CONDITIONS TOPOGRAPHIC SURVEY OF THIS SITE HAS BEEN PROVIDED BY SCHMIDT LAND SURVEYING . INC DATED 12 AUG 2019.
2. A GEOTECHNICAL STUDY FOR THIS SITE HAS BEEN PROVIDED BY CMT TECHNICAL SERVICES, DATED 8 MAY 2026.
3. THE CONTRACTOR IS TO VERIFY LOCATIONS OF ALL UTILITIES PRIOR TO ANY EXCAVATION.
4. ANY EXISTING LANDSCAPING OUTSIDE OF THE LIMIT OF DISTURBANCE, AND ANY TREES DESIGNATED TO REMAIN, ARE TO BE FLAGGED AND PROTECTED DURING ALL CONSTRUCTION.
5. FINISH GRADE IS TO PROVIDE DRAINAGE AWAY FROM THE FOUNDATION VIA SWALES, DRAINS, ETC, AT ALL LOCATIONS.
6. PROTECT ALL TOPSOIL WHEN EXCAVATING AND REAPPLY TO ALL DISTURBED SOIL AREAS AFTER CONSTRUCTION IS COMPLETE.

LOCATION MAP



LEGAL DESCRIPTION

PIONEER PARK
RESTROOM STRUCTURE
GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK B
FRISCO . COLORADO

SHEET INDEX

BUILDING AREA CALCULATIONS

PROPOSED GROSS ENCLOSED FLOOR AREA	TOTAL (SF)
RESTROOM STRUCTURE	170

TOTAL BUILDING FOOTPRINT (INCLUDING ROOF OVERHANGS)	521
PROPOSED HEATED PAVING AREA:	0

PROJECT DIRECTORY

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PRELIMINARY - NOT FOR CONSTRUCTION

PIONEER PARK
GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK B
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE
INFORMATION SHEET ONE

ISSUE:	DATE:
REVIEW	16 JUN 2026

PROJECT #: 2515

INFO1

CLIMATIC ZONE DESIGN CRITERIA

[PER 2018 IBC TABLE C402.1.3]

TABLE C402.1.3
OPAQUE THERMAL ENVELOPE INSULATION COMPONENT MINIMUM REQUIREMENTS, R-VALUE METHOD[a, i]

CLIMATE ZONE	1		2		3		4 EXCEPT MARINE		5 AND MARINE 4		6		7		8	
	All other	Group R	All other	Group R	All other	Group R	All other	Group R	All other	Group R	All other	Group R	All other	Group R	All other	Group R
Roofs																
Insulation entirely above roof deck	R-20ci	R-25ci	R-25ci	R-25ci	R-25ci	R-25ci	R-30ci	R-30ci	R-30ci	R-30ci	R-30ci	R-30ci	R-35ci	R-35ci	R-35ci	R-35ci
Metal buildings[b]	R-19 + R-11 LS	R-19 + R-11 LS	R-19 + R11 LS	R-19 + R-11 LS	R-19 + R-11 LS	R-19 + R-11 LS	R-19 + R-11 LS	R-19 + R-11 LS	R-19 + R-11 LS	R-19 + R-11 LS	R-25 + R-11 LS	R-25 + R-11 LS	R-30 + R-11 LS	R-30 + R-11 LS	R-30 + R-11 LS	R-30 + R-11 LS
Attic and other	R-38	R-38	R-38	R-38	R-38	R-38	R-38	R-38	R-38	R-49	R-49	R-49	R-49	R-49	R-49	R-49
Walls, above grade																
Mass[g]	R-5.7ci[c]	R-5.7ci[c]	R-5.7ci[c]	R-7.6ci	R-7.6ci	R-9.5ci	R-9.5ci	R-11.4ci	R-11.4ci	R-13.3ci	R-13.3ci	R-15.2ci	R-15.2ci	R-15.2ci	R-25ci	R-25ci
Metal building	R-13 + R-6.5ci	R-13 + R-6.5ci	R13 + R-6.5ci	R-13 + R-13ci	R-13 + R-6.5ci	R-13 + R-13ci	R-13 + R-13ci	R-13 + R-13ci	R-13 + R-13ci	R-13 + R-13ci	R-13 + R-13ci	R-13 + R-13ci	R-13 + R-13ci	R-13 + R-19.5ci	R-13 + R-13ci	R-13 + R-19.5ci
Metal framed	R-13 + R-5ci	R-13 + R-5ci	R-13 + R-5ci	R-13 + R-7.5ci	R-13 + R-7.5ci	R-13 + R-7.5ci	R-13 + R-7.5ci	R-13 + R-7.5ci	R-13 + R-7.5ci	R-13 + R-7.5ci	R-13 + R-7.5ci	R-13 + R-7.5ci	R-13 + R-7.5ci	R-13 + R-15.6ci	R-13 + R-7.5ci	R-13 + R17.5ci
Wood framed and other	R-13 + R-3.8ci or R-20	R-13 + R-3.8ci or R-20	R-13 + R-3.8ci or R-20	R-13 + R-3.8ci or R-20	R-13 + R-3.8ci or R-20	R-13 + R-3.8ci or R-20	R-13 + R-3.8ci or R-20	R-13 + R-3.8ci or R-20	R-13 + R-3.8ci or R-20	R-13 + R-7.5ci or R-20 + R-3.8ci	R-13 + R-7.5ci or R-20 + R-3.8ci	R-13 + R-7.5ci or R-20 + R-3.8ci	R-13 + R-7.5ci or R-20 + R-3.8ci	R-13 + R-7.5ci or R-20 + R-3.8ci	R13 + R-15.6ci or R-20 + R-10ci	R13 + R-15.6ci or R-20 + R-10ci
Walls, below grade																
Below-grade wall[d]	NR	NR	NR	NR	NR	NR	R-7.5ci	R-7.5ci	R-7.5ci	R-7.5ci	R-7.5ci	R-7.5ci	R-10ci	R-10ci	R-10ci	R-12.5ci
Floors																
Mass[e]	NR	NR	R-6.3ci	R-8.3ci	R-10ci	R-10ci	R-10ci	R-10.4ci	R-10ci	R-12.5ci	R-12.5ci	R-12.5ci	R-15ci	R-16.7ci	R-15ci	R-16.7ci
Joist/framing	NR	NR	R-30	R-30	R-30	R-30	R-30	R-30	R-30	R-30	R-30	R-30[f]	R-30[f]	R-30[f]	R-30[f]	R-30[f]
Slab-on-grade floors																
Unheated slabs	NR	NR	NR	NR	NR	NR	R-10 for 24" below	R-10 for 24" below	R-10 for 24" below	R-10 for 24" below	R-10 for 24" below	R-15 for 24" below	R-15 for 24" below	R-15 for 24" below	R-15 for 24" below	R-20 for 24" below
Heated slabs[h]	R-7.5 for 12" below + R-5 full slab	R-7.5 for 12" below + R-5 full slab	R-7.5 for 12" below + R-5 full slab	R-7.5 for 12" below + R-5 full slab	R-10 for 24" below + R-5 full slab	R-10 for 24" below + R-5 full slab	R-15 for 24" below + R-5 full slab	R-15 for 24" below + R-5 full slab	R-15 for 36" below + R-5 full slab	R-15 for 36" below + R-5 full slab	R-15 for 36" below + R-5 full slab	R-20 for 48" below + R-5 full slab	R-20 for 48" below + R-5 full slab	R-20 for 48" below + R-5 full slab	R-20 for 48" below + R-5 full slab	R-20 for 48" below + R-5 full slab

FLOODPROOFING NOTES

1. RESTROOM STRUCTURE TO BE LOCATED WITHIN FEMA FLOODWAY ZONE AO, PER FEMA MAP NUMBER 08117C0353F.
2. PER TOWN OF FRISCO CODE SECTION 97-13 STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES):
LOCATED WITHIN THE SPECIAL FLOOD HAZARD AREA ESTABLISHED IN SECTION 97-6(A), ARE AREAS DESIGNATED AS SHALLOW FLOODING. THESE AREAS HAVE SPECIAL FLOOD HAZARDS ASSOCIATED WITH BASE FLOOD DEPTHS OF ONE TO THREE FEET WHERE A CLEARLY DEFINED CHANNEL DOES NOT EXIST AND WHERE THE PATH OF FLOODING IS UNPREDICTABLE AND WHERE VELOCITY FLOW MAY BE EVIDENT. SUCH FLOODING IS CHARACTERIZED BY PONDING OR SHEET FLOW; THEREFORE, THE FOLLOWING PROVISIONS APPLY:
B. NON-RESIDENTIAL CONSTRUCTION. ALL NEW CONSTRUCTION SHALL HAVE THE LOWEST FLOOR ELEVATED ABOVE THE HIGHEST ADJACENT GRADE AT LEAST ONE FOOT ABOVE THE DEPTH NUMBER SPECIFIED IN FEET ON THE COMMUNITY'S FIRM OR TOGETHER WITH ATTENDANT UTILITY AND SANITARY FACILITIES BE DESIGNED SO THAT THE STRUCTURE IS WATERTIGHT TO AT LEAST ONE FOOT ABOVE THE BASE FLOOD LEVEL WITH WALLS SUBSTANTIALLY IMPERMEABLE TO THE PASSAGE OF WATER AND WITH STRUCTURAL COMPONENTS HAVING THE CAPABILITY OF RESISTING HYDROSTATIC AND HYDRODYNAMIC LOADS OF EFFECTS OF BUOYANCY.
3. NOTED FEMA MAP FLOODWAY ZONE AO DEPTH: ONE FOOT.
4. PER ASCE 24 FLOOD RESISTANT DESIGN AND CONSTRUCTION, FLOOD DESIGN CLASS: 2.
5. MINIMUM ELEVATION BELOW WHICH FLOOD-DAMAGE-RESISTANT MATERIALS SHALL BE USED:
ZONE AO, FLOOD DESIGN CLASS 3: FLOOD DEPTH (1') + 1'; DESIGN FLOOD ELEVATION CALC:
PROPOSED FINISH GRADE ELEVATION = 9,035.50' + 2.00' = 9,037.50' (=ARCH EL 102'-0").
6. THE TOWN OF FRISCO SHALL DEVELOP A FLOOD EMERGENCY OPERATION PLAN WITH SPECIFIC DETAILS FOR THIS RESTROOM STRUCTURE.
7. THE TOWN OF FRISCO SHALL DEVELOP AN INSPECTION & MAINTENANCE PLAN WITH SPECIFIC DETAILS FOR THIS RESTROOM STRUCTURE.
8. REFER TO DRAWINGS, NOTES, AND DETAILS FOR ADDITIONAL REQUIREMENTS.

MATERIAL FLAME/SMOKE INDEX NOTES

1. CLOSED-CELL SPRAY-FOAM INSULATION (REFER TO A5.1 FOR TYPICAL LOCATIONS) SHALL HAVE A FLAME-SPREAD INDEX OF NOT MORE THAN 75 (IF INSULATION THICKNESS IS 4 INCHES OR LESS) OR NOT MORE THAN 25 (IF INSULATION THICKNESS IS OVER 4 INCHES) AND A SMOKE-DEVELOPED INDEX OF NOT MORE THAN 450, IN ACCORDANCE WITH ASTM E84 OR UL 723.
2. CONCEALED AND EXPOSED BUILDING INSULATION (BATTS, BLANKETS, VAPOR RETARDERS, VAPOR-PERMEABLE MEMBRANES, ETC) SHALL HAVE A FLAME-SPREAD INDEX OF NOT MORE THAN 25 AND A SMOKE-DEVELOPED INDEX OF NOT MORE THAN 450, IN ACCORDANCE WITH ASTM E84 OR UL 723.
3. EXPOSED BUILDING INSULATION (BATTS, BLANKETS, VAPOR RETARDERS, VAPOR-PERMEABLE MEMBRANES, ETC) INSTALLED ON ATTIC FLOORS SHALL HAVE A CRITICAL RATIANT FLUX OF NOT LESS THAN 0.12 WATT PER SQUARE CENTIMETER, WHEN TESTED IN ACCORDANCE WITH ASTM E970.
4. COMBUSTIBLE INSULATION SHALL BE SEPARATED NOT LESS THAN 3 INCHES FROM RECESSED LUMINAIRES, FAN MOTORS, AND OTHER HEAT-PRODUCING DEVICES.

CODE STUDY

ALL APPLICABLE CODES, ORDINANCES, AND AMENDMENTS TO THE CODE SHALL GOVERN THIS PROJECT. THE GENERAL CONTRACTOR AND SUBCONTRACTORS SHALL BE RESPONSIBLE FOR FOLLOWING ALL CODES, ORDINANCES, AND AMENDMENTS. COMPLIANCE WITH ALL CODES, ORDINANCES, AND AMENDMENTS IS ABSOLUTELY MANDATORY.

REGULATING CODES (AND ADOPTED AMENDMENTS):
- 2018 INTERNATIONAL BUILDING CODE (IBC)
- 2018 INTERNATIONAL FIRE CODE (IFC)
- 2023 NFPA 70 NATIONAL ELECTRIC CODE (NEC)
- 2006 INTERNATIONAL CODE COUNCIL ELECTRICAL CODE ADMINISTRATIVE PROVISIONS
- 2018 INTERNATIONAL MECHANICAL CODE (IMC)
- 2018 INTERNATIONAL PLUMBING CODE (IPC)
- 2018 INTERNATIONAL ENERGY CONSERVATION CODE (IECC)
- 2010 AMERICANS WITH DISABILITIES ACT (ADA) STANDARDS FOR ACCESSIBLE DESIGN
- 2017 INTERNATIONAL CODE COUNCIL A117.1

2018 INTERNATIONAL BUILDING CODE PROVISIONS:

312 - OCCUPANCY TYPE.
UTILITY AND MISCELLANEOUS GROUP (U)

TABLE 504.3 - ALLOWABLE BUILDING HEIGHT IN FEET ABOVE GRADE PLANE.
OCCUPANCY TYPE U, NO AUTOMATIC SPRINKLER SYSTEM, CONSTRUCTION TYPE V-B: 40'-0"
ACTUAL HEIGHT: 14'-9 5/8"

TABLE 504.4 - ALLOWABLE NUMBER OF STORIES ABOVE GRADE PLANE.
OCCUPANCY TYPE U, NO AUTOMATIC SPRINKLER SYSTEM, CONSTRUCTION TYPE V-B: 1 STORY.
ACTUAL STORIES: 1 STORY.

TABLE 506.2 - ALLOWABLE AREA FACTOR IN SQUARE FEET.
OCCUPANCY TYPE U, NO AUTOMATIC SPRINKLER SYSTEM, CONSTRUCTION TYPE V-B: 5,500 SF.
ACTUAL AREA: 170 SF.

TABLE 601 - FIRE-RESISTIVE RATING REQUIREMENTS FOR BUILDING ELEMENTS (HOURS).
PRIMARY STRUCTURAL FRAME: 0 HR
BEARING WALLS
EXTERIOR: 0 HR
INTERIOR: 0 HR
NON-BEARING WALLS AND PARTITIONS, INTERIOR: 0 HR
FLOOR CONSTRUCTION AND ASSOCIATED SECONDARY MEMBERS: 0 HR
ROOF CONSTRUCTION AND ASSOCIATED SECONDARY MEMBERS: 0 HR

TABLE 602 - FIRE-RESISTIVE RATING REQUIREMENTS FOR EXTERIOR WALLS BASED ON FIRE SEPARATION DISTANCE (HOURS).
X > OR EQ TO 30 FEET, CONSTRUCTION TYPE V-B, OCCUPANCY TYPE U: 0 HR

602.5 - TYPE V.

708 - FIRE PARTITIONS.
N/A

903 - AUTOMATIC SPRINKLER SYSTEMS.
NO AUTOMATIC SPRINKLER SYSTEM

2018 INTERNATIONAL ENERGY CONSERVATION CODE PROVISIONS:

TABLE C301.1 - CLIMATE ZONE.
SUMMIT COUNTY . COLORADO: ZONE 7

INTERIOR FINISH NOTES

1. ALL MANUFACTURERS INSTALLATION SPECIFICATIONS AND INSTRUCTIONS ARE TO BE FOLLOWED.
2. REFER TO DRAWING SHEET A6.1 FOR ENLARGED RESTROOM PLAN & INTERIOR ELEVATIONS.
3. TYPICAL INTERIOR FINISH AT CONCRETE FLOOR SLABS TO BE EPOXY. FLOOR FINISH SURFACES SHALL BE STABLE, FIRM, AND SLIP RESISTANT PER ADA ACCESSIBILITY REQUIREMENTS.
4. TYPICAL INTERIOR FINISH AT WALLS AND CEILINGS TO BE FIBERGLASS REINFORCED PLASTIC (FRP) PANELS.
5. ALL INTERIOR FIXTURES AND FINISHES, PER INTERIOR ELEVATIONS (RE: A6.1).
6. ALL INTERIOR WALL & CEILING COVERING MATERIALS TO MEET PERFORMANCE TEST STANDARDS & INSTALLATION REQUIREMENTS PER IBC SECTION 803.
7. PROVIDE ALL REQUIRED BLOCKING AT FRAME WALLS FOR FINISH & FIXTURE INSTALLATION; COORDINATE INSTALL W/ MFR SPECS.

EXTERIOR MATERIAL SCHEDULE

NOTE: ALL EXTERIOR WALL COVERING MATERIALS TO MEET PERFORMANCE TEST STANDARDS AND INSTALLATION REQUIREMENTS PER IBC SECTION R703.

LABEL	ITEM	COLOR	DESCRIPTION
M1	ROOF	TBD	
M2	FASCIA	TBD	
M4	SOFFIT	TBD	
M5	HORIZONTAL SIDING	TBD	
M7	DOOR & WINDOW TRIM	TBD	
M9	DOORS / WINDOWS	TBD	
M10	STONE VENEER CAP	TBD	
M12	STONE VENEER	TBD	
M13	EXPOSED TIMBER COLUMNS & BEAMS	TBD	

NOTES:
1. ALL EXPOSED METAL INCLUDING, BUT NOT LIMITED TO, TYPICAL FLASHING, DOWNSPOUTS, GUTTERS, DRIP EDGE, VENT STACKS, FLUE PIPES, ETC, SHALL HAVE A NON-REFLECTIVE KYNAR 500 MATTE BLACK FINISH, TO MATCH DECK GUARDRAILS.
2. ALL COLOR SAMPLES, AND SUBSEQUENT FULL SIZE ON-SITE MATERIAL MOCK-UP, TO BE APPROVED BY ARCHITECT/OWNER, PRIOR TO ORDERING/FABRICATION.

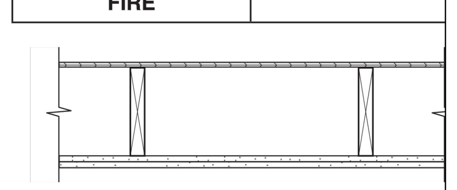
DOOR NOTES

1. ALL PROPOSED DOORS TO INSULATED METAL, WITH THERMALLY BROKEN INSULATED METAL FRAMES, AND INTEGRAL TRANSOM WINDOWS (RE: DETAIL 1/INFO2).
2. ALL DOOR GLAZING TO BE DOUBLE PANED, LOW E, DUEL SEALED, AND RATED FOR HIGH ALTITUDE. ALL GLAZING PANES TO HAVE A U-FACTOR OF 0.30, MAX.
3. ALL DOOR HARDWARE TO BE CHOSEN BY OWNER.
4. DOOR SIZES AND SWING DIRECTIONS NOTED ON FLOOR PLANS.
5. REFER TO EXTERIOR ELEVATIONS FOR SPECIFIC DOOR OPERATION.
6. PROVIDE AUTOMATIC DOOR OPERATION CONTROLS AT RESTROOM SPACES, PER ACCESSIBILITY DETAILS (RE: A0.1) & INTERIOR ELEVATIONS (RE: A6.1).
7. INSULATE ALL EXTERIOR DOOR SHIM SPACES.
8. PROVIDE WEATHERSTRIPPING AND THRESHOLDS AT ALL EXTERIOR DOORS.
9. ALL DOOR OPENINGS TO BE WRAPPED WITH HENRY 'BLUESKIN VP100' HOUSEWRAP (OR EQUAL), AND FITTED WITH SELF-ADHERING FLASHING, COORD INSTALL W/ MFR'S SPECIFICATIONS, PRIOR TO SETTING DOOR JAMBS.
10. ALL GLAZING AT HAZARDOUS LOCATIONS TO BE GLAZED WITH SAFETY MATERIAL, PER LOCAL CODE. GC TO FIELD VERIFY REQUIRED LOCATIONS WITH LOCAL JURISDICTION, PRIOR TO ORDERING. ALL HAZARDOUS GLASS PANE LOCATIONS SHALL BE INDIVIDUALLY IDENTIFIED AND LABELED, AND SHALL BE TESTED IN ACCORDANCE WITH CPSC 16 CFR 1201, OR, AS APPLICABLE, ANSI Z97.1.
11. GC TO FIELD VERIFY ALL EGRESS UNIT LOCATIONS & OPENING SIZE REQUIREMENTS, PRIOR TO ORDERING. (RE: FLOOR PLANS.) ALL EGRESS WINDOW & DOOR UNITS SHALL BE READILY OPERABLE FROM INSIDE THE SPACE WITHOUT THE USE OF A KEY OR SPECIAL KNOWLEDGE OR EFFORT.
12. RESTROOM DOORS TO MEET ADA ACCESSIBILITY REQUIREMENTS. DOORS TO HAVE AUTOMATIC PUSH-BUTTON OPENERS W/ BATTERY BACK-UP, AS REQ'D.

GA FILE NO. RC 2601	GENERIC	1 HOUR FIRE

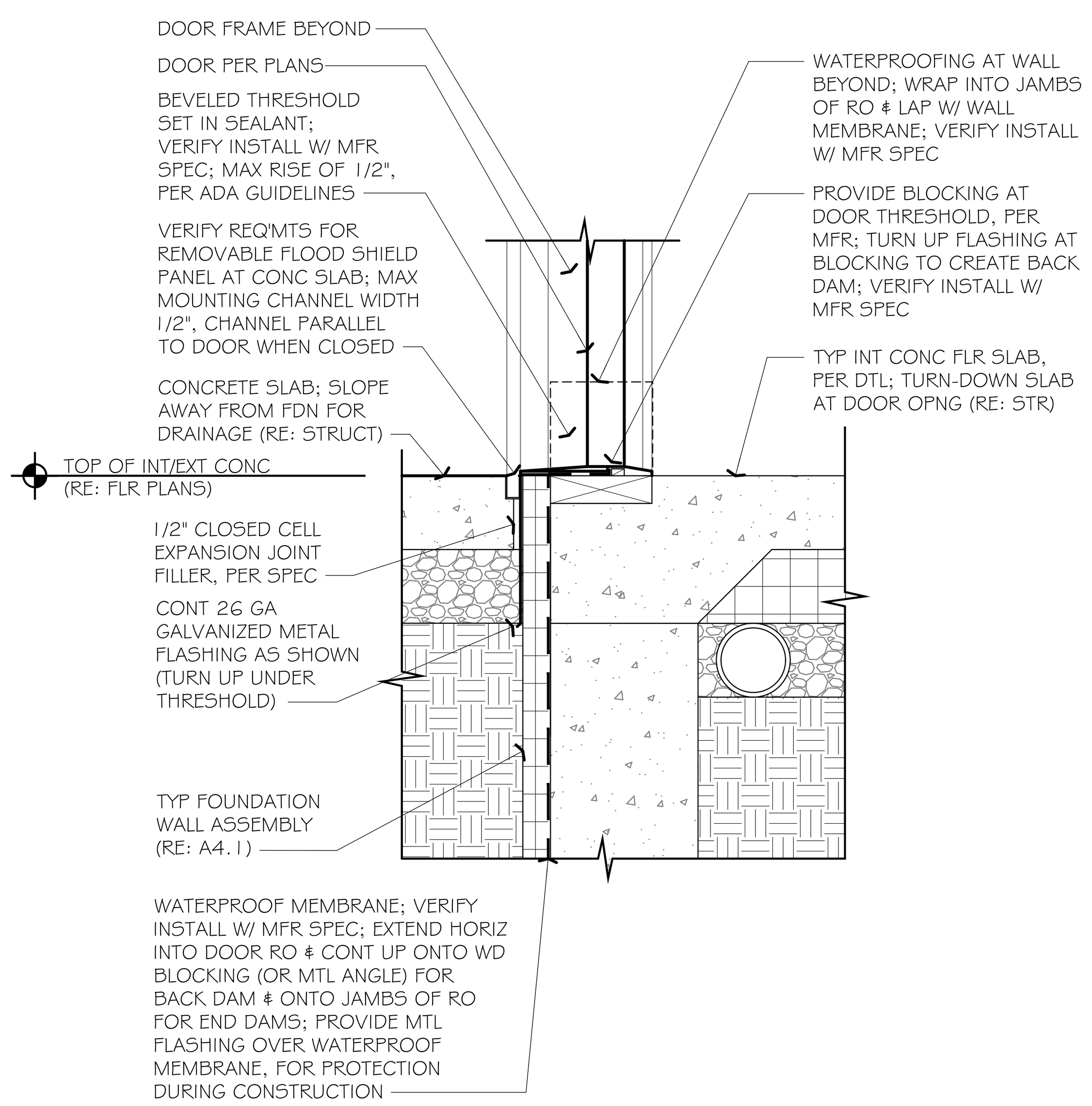
GYPSUM WALLBOARD, WOOD JOISTS, ROOF COVERING

Fire Design:
Base layer 5/8" type X gypsum wallboard applied at right angles to 2 x 10 wood joists 24" o.c. with 1-1/4" Type W or S screws 24" o.c.
Face layer 5/8" type X gypsum wallboard or gypsum veneer base applied at right angles to joists with 1-7/8" Type W or S screws 12" o.c. at joints and intermediate joists and 1-1/2" Type G screws 12" o.c. placed 2" back on either side of end joints. Wood joists supporting 1/2" plywood with exterior glue applied at right angles to joists with 8d nails. Appropriate roof covering.
Joints offset 24" from **base** layer joints.

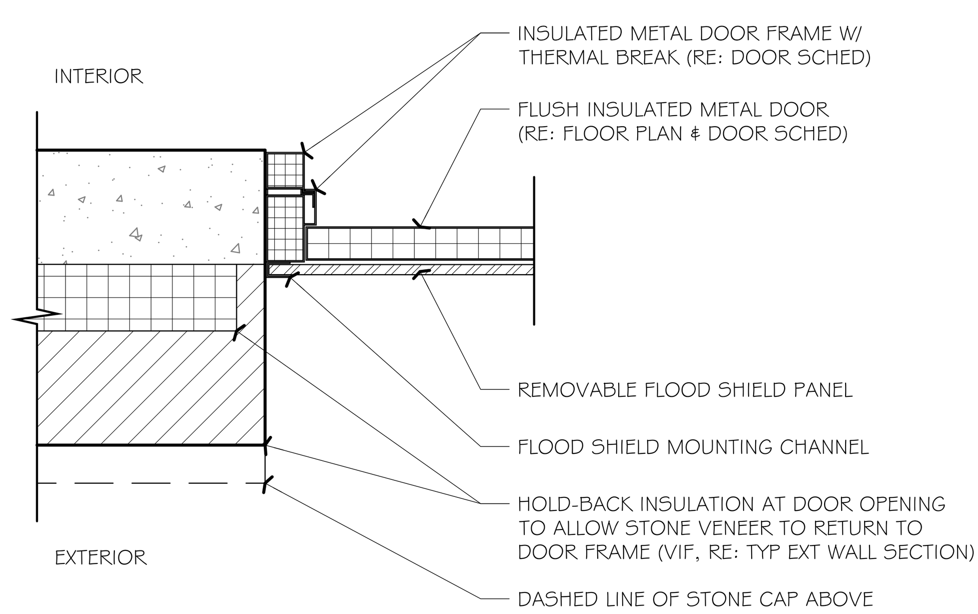


Approx. Ceiling Weight: 5 psf (Fire)
Fire Test: FM FC 172, 2-25-72, ITS, 8-6-98

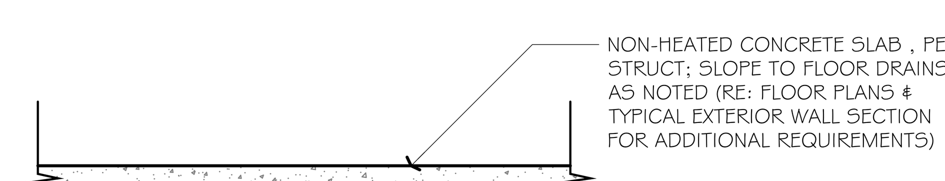
5 INFO2 — 1-HOUR FIRE-RATED EXTERIOR SOFFIT
SCALE: NTS



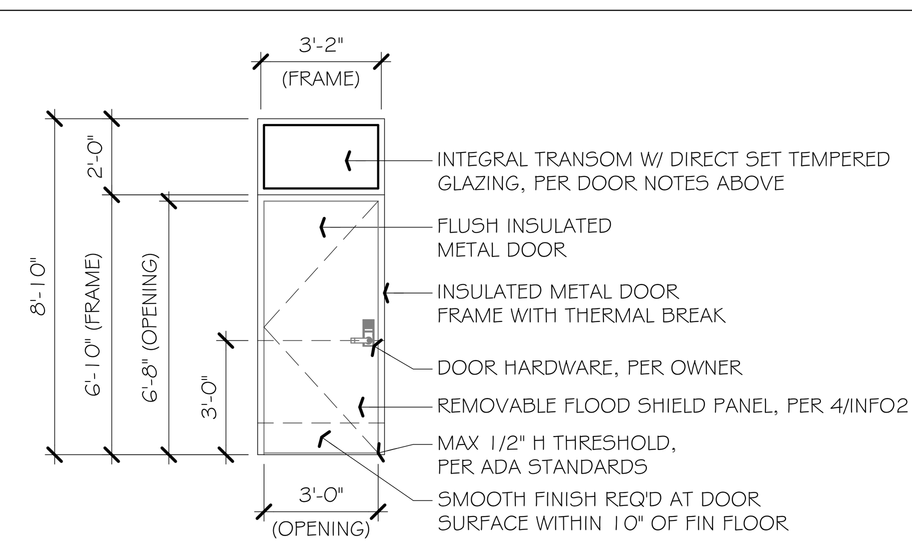
3 INFO2 — THRESHOLD AT CONCRETE SLAB
SCALE: 1 1/2" = 1'-0"



4 INFO2 — FLOOD SHIELD AT DOOR JAMB
SCALE: 1 1/2" = 1'-0"



2 INFO2 — TYPICAL INTERIOR CONCRETE SLAB
SCALE: 3/4" = 1'-0"



NOTES:
1. VERIFY DOOR STYLE WITH OWNER PRIOR TO ORDERING/FABRICATION.
2. DO NOT PRE-BORE FOR HARDWARE.
3. ALL FINISHED MATERIAL SAMPLES TO BE PROVIDED TO ARCHITECT & OWNER PRIOR TO ORDERING/FABRICATION.

1 INFO2 — TYPICAL EXTERIOR DOOR - ELEVATION
SCALE: 1/4" = 1'-0"

ALLEN-GUERRA
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ALLEN-GUERRA ARCHITECTURE
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PRELIMINARY - NOT FOR CONSTRUCTION

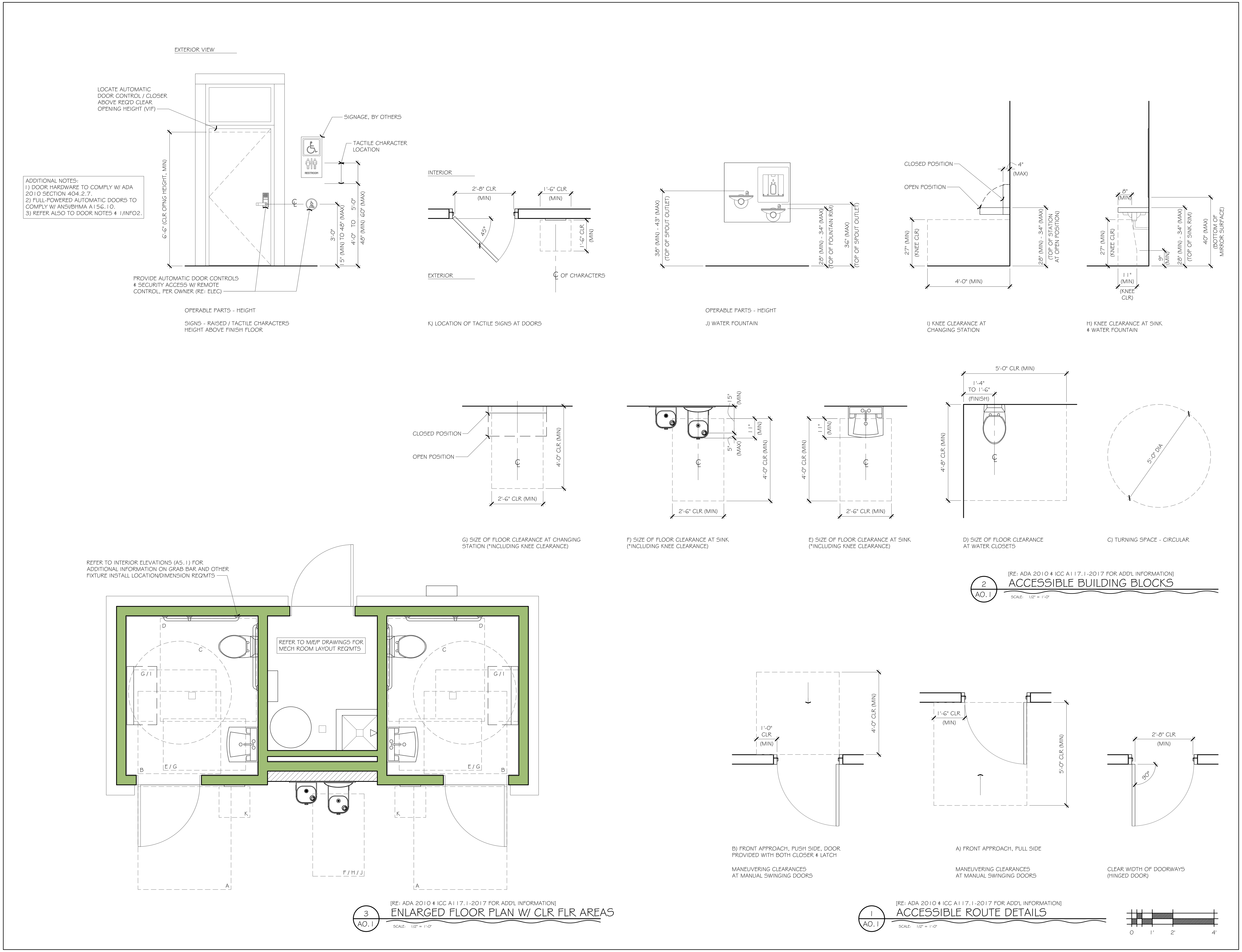
PIONEER PARK
GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK D
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE INFORMATION SHEET TWO

ISSUE:	DATE:
REVIEW	16 JUN 2026

PROJECT #: 2515

INFO2



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PRELIMINARY - NOT FOR CONSTRUCTION

PIONEER PARK
GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK D
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE
ACCESSIBILITY DETAILS

ISSUE:	DATE:
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PROJECT #: 2515

A0.1

ALLEN-GUERRA
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PRELIMINARY - NOT FOR CONSTRUCTION

PIONEER PARK

GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK B
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE
ARCHITECTURAL SITE PLAN

ISSUE:	DATE:
REVIEW	16 JUN 2026

PROJECT #: 2515

A1.1

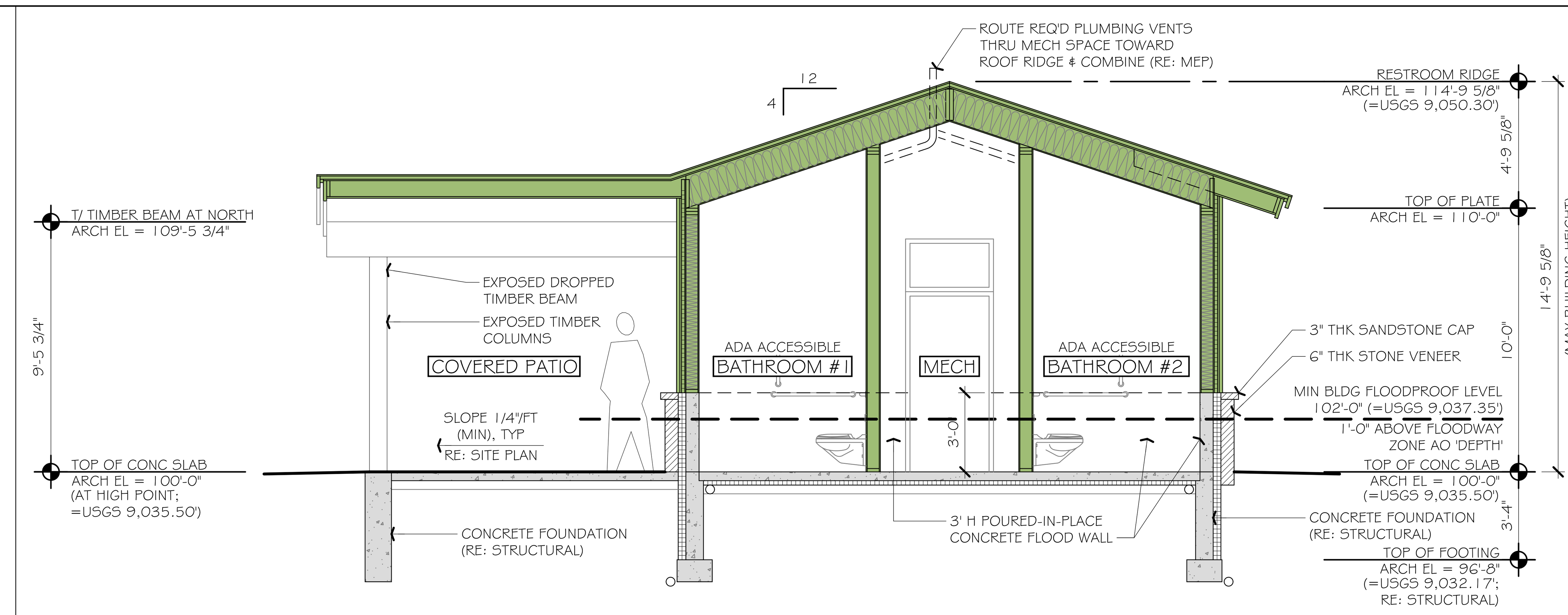
ACCESSIBLE ROUTE NOTES:
1. THE RUNNING SLOPE OF WALKING SURFACES SHALL NOT BE STEEPER THAN 1:20 (5%). THE CROSS SLOPE OF WALKING SURFACES SHALL NOT BE STEEPER THAN 1:48 (2%). RE: LANDSCAPE - GRADING & DRAINAGE PLAN.
2. ALL SURFACES OF ACCESSIBLE ROUTES MUST BE FIRM, STABLE, AND SLIP RESISTANT. RE: LANDSCAPE MATERIALS PLAN.

PROPOSED SITE GRADING NOTE:
RE: LANDSCAPE - GRADING & DRAINAGE PLAN.

PROPOSED UTILITY SERVICE NOTE:
RE: LANDSCAPE - UTILITY PLAN.

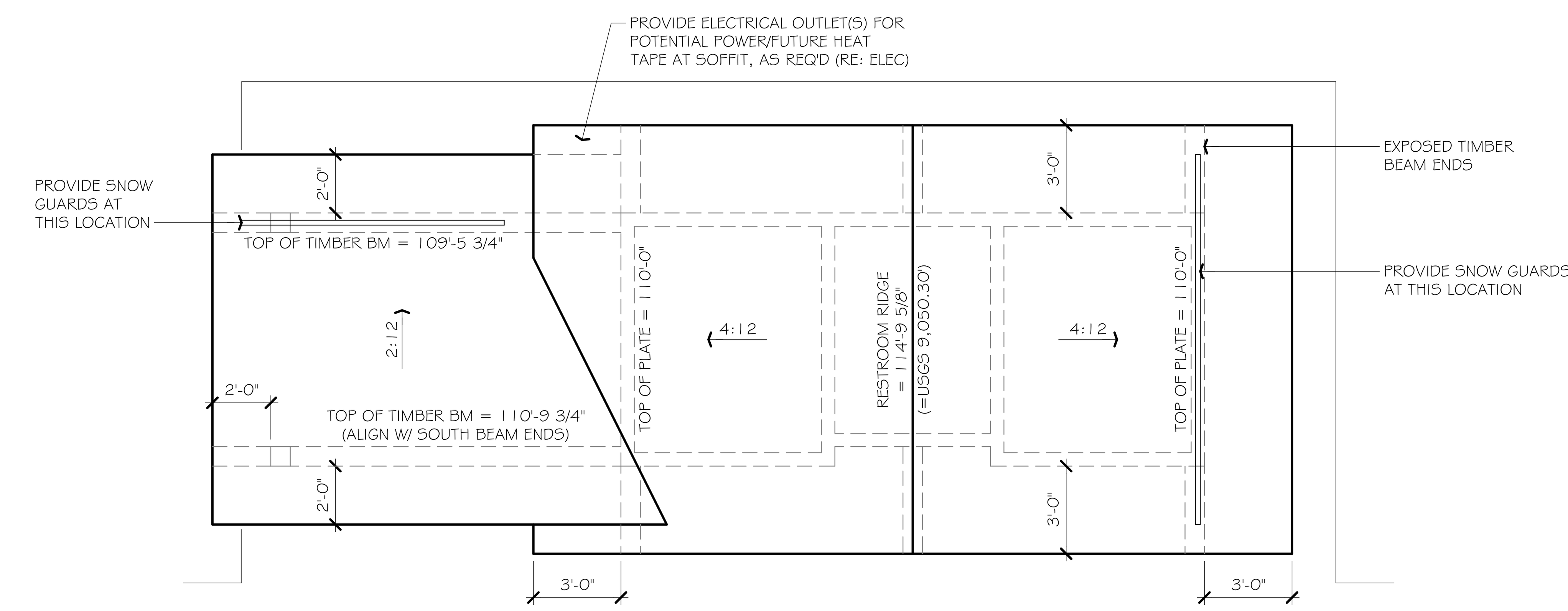
1
A1.1
ARCHITECTURAL SITE PLAN
SCALE: 1/8" = 1'-0"

NORTH
PLAN NORTH
0 2' 4' 8' 16'



3 A2.1 BUILDING SECTION [FACING NORTH]

SCALE: 1/4" = 1'-0"



ROOF SNOW PROTECTION (SNOW GUARDS, SNO GEMS, OR SIM), TO BE PROVIDED AS NOTED, MINIMUM. GC TO VERIFY REQUIRED LOCATIONS IN FIELD W/ ARCHITECT.**

2 A2.1 ROOF PLAN

SCALE: 1/4" = 1'-0"

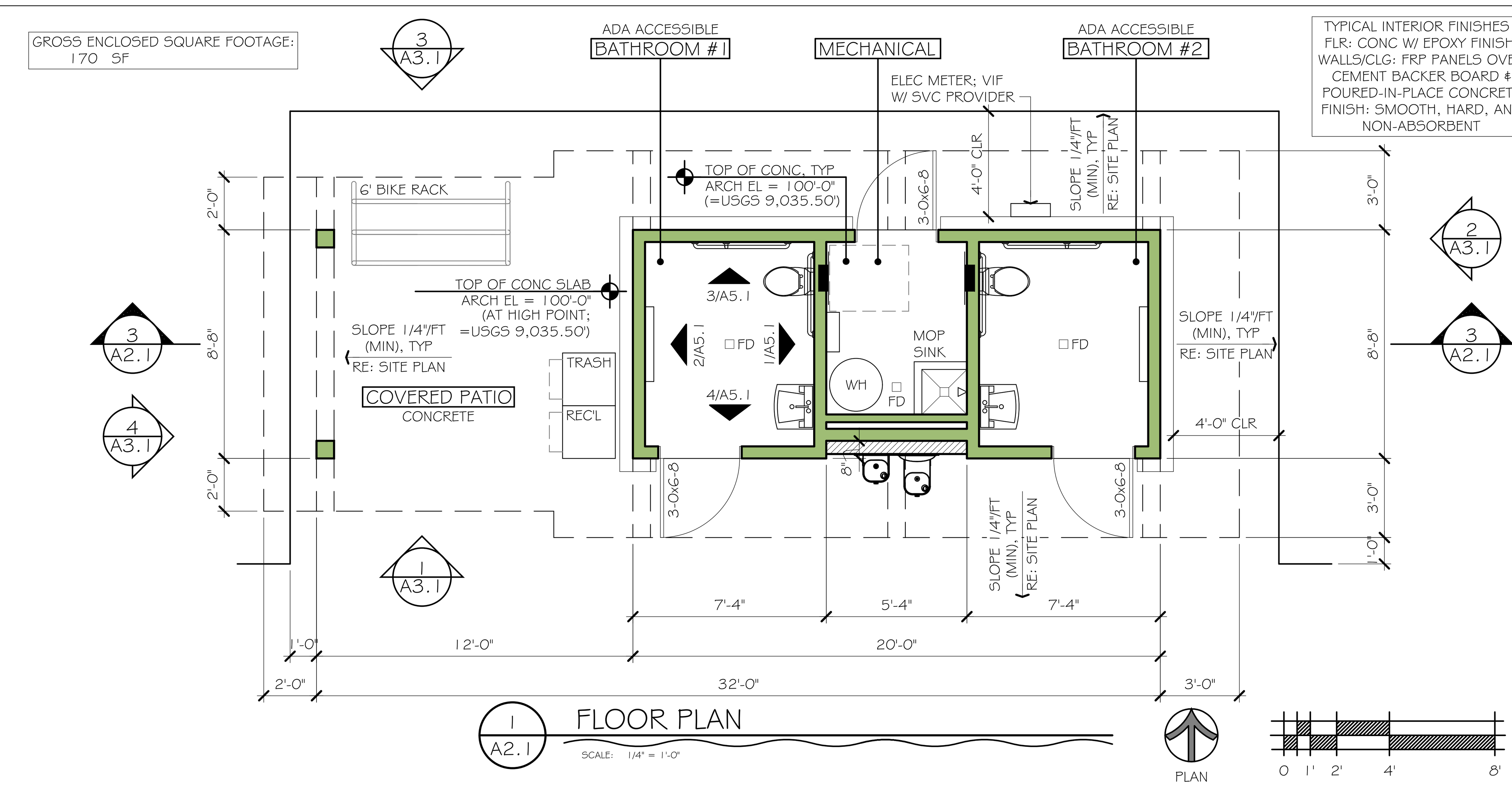
ADDITIONAL TYPICAL MECHANICAL ROOM NOTES:
1) VERIFY EQUIPMENT SIZING, LAYOUT, DRAINAGE, VENTING, AND ADD'L REQ'MTS W/ SYSTEM DESIGNER(S).
2) PROVIDE WATER SVC ENTRY AT MECH RM, WITH SHUT-OFF VALVES, AS REQ'D.
3) PROVIDE BACK-FLOW PREVENTERS, AS REQ'D.
4) PROVIDE TWO WATER SVC METERS: IRRIGATION SYSTEM & RESTROOM STRUCTURE.
5) PROVIDE DOMESTIC HOT WATER HEATER AS REQ'D.
6) PROVIDE PARK IRRIGATION CONTROLS AT MECH ROOM.
7) PROVIDE ELECTRICAL PANEL AT MECH ROOM.
8) PROVIDE A/V/ACCESS PANEL AT MECH ROOM.

WALL LEGEND
- WOOD & TIMBER FRAMING [RE: STRUCTURAL]
- FORMED CONCRETE WALLS [RE: STRUCTURAL]
- STONE VENEER [RE: EXTERIOR ELEVATIONS]
- WALLS / FRAMING BELOW
- WALLS / FRAMING ABOVE

FLOOR PLAN NOTES:
- ARCH 100'-0" = USGS 9,035.50'.
- ALL EXTERIOR STUD WALLS TO BE 6" THK POURED-IN-PLACE CONCRETE OR 2x6 WOOD FRAMING (RE: STRUCTURAL).
- REFER TO TYPICAL EXTERIOR WALL SECTIONS (AX.X) FOR ADDITIONAL EXTERIOR WALL ASSEMBLY SPECIFICATIONS.
- VERIFY IN FIELD UTILITY METER LOCATION(S) W/ SERVICE PROVIDER & LANDSCAPE/CIVIL PLANS.
- ALL INTERIOR FINISHES PER INTERIOR ELEVATIONS (AX.X).
- PROVIDE VENTILATION SYSTEMS AS REQUIRED PER CODE.
- ALL PLUMBING AND UTILITIES WHICH PASS THROUGH SLABS SHALL BE ISOLATED FROM THE SLABS WITH SLEEVES AND PROVIDED WITH FLEXIBLE COUPLINGS (RE: GEOTECH).
- PROVIDE RADON VENTING AT FOUNDATION, AS REQ'D. VERIFY ROUTING IN FIELD W/ ARCHITECT.

GROSS ENCLOSED SQUARE FOOTAGE: 170 SF

TYPICAL INTERIOR FINISHES - FLR: CONC W/ EPOXY FINISH; WALLS/CLG: FRP PANELS OVER CEMENT BACKER BOARD & POURED-IN-PLACE CONCRETE FINISH: SMOOTH, HARD, AND NON-ABSORBENT



1 A2.1 FLOOR PLAN

SCALE: 1/4" = 1'-0"

PRELIMINARY - NOT FOR CONSTRUCTION

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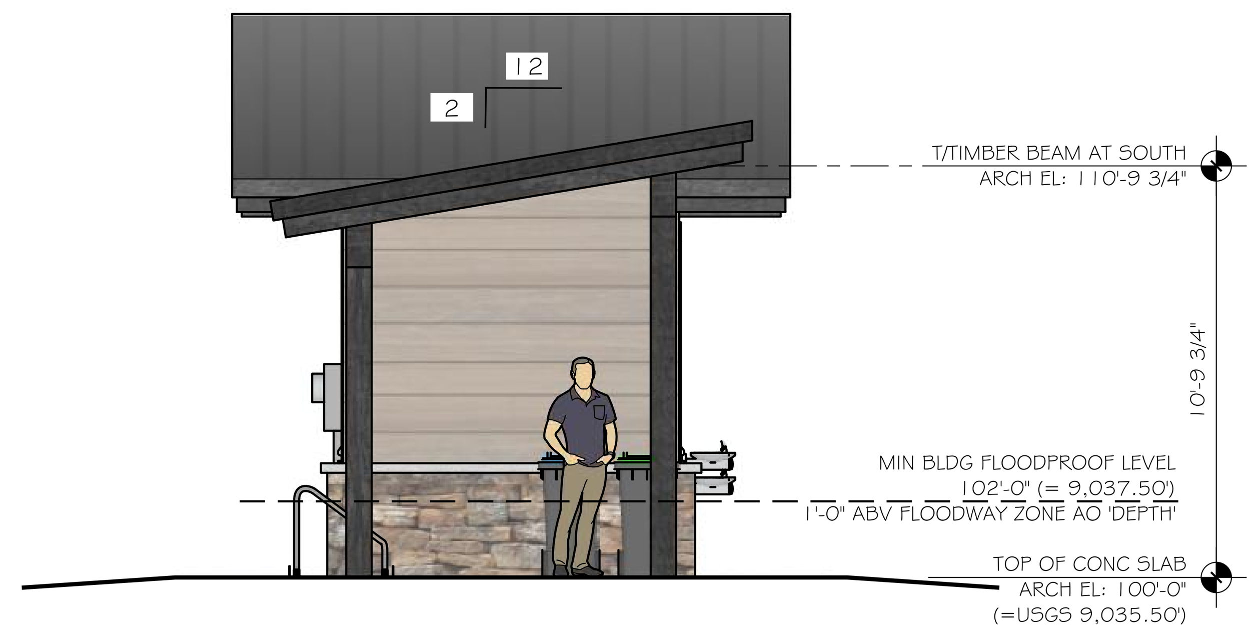
PIONEER PARK
GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK D
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE
FLOOR PLAN, ROOF PLAN, & BUILDING SECTION

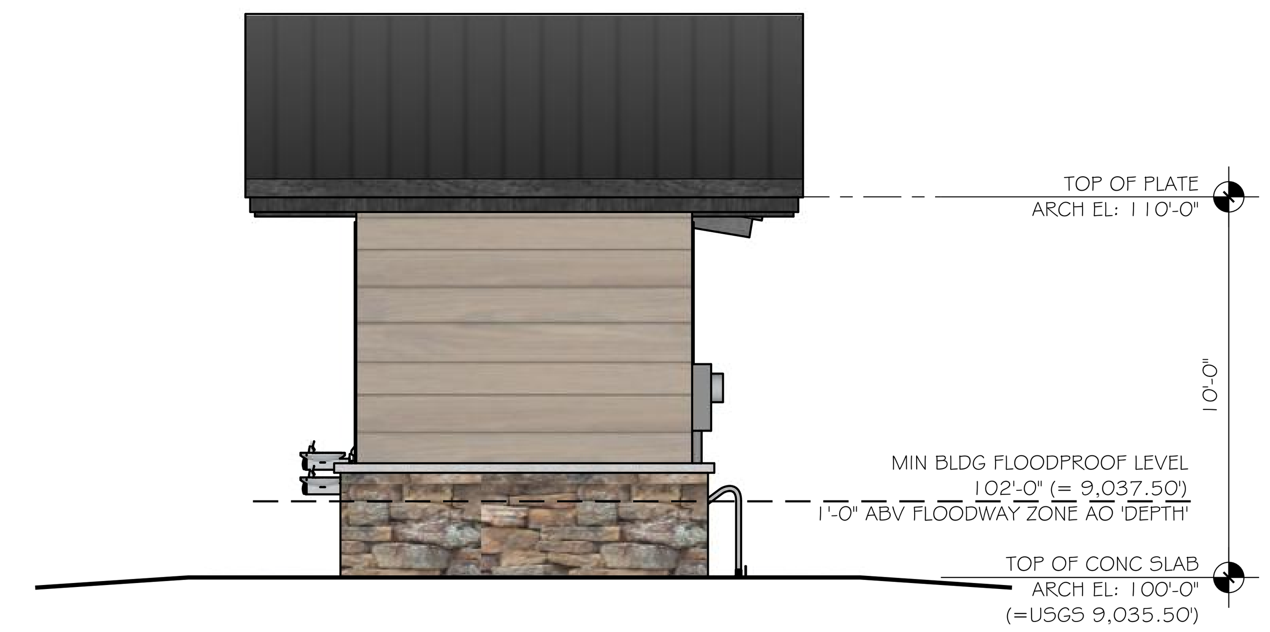
ISSUE:	DATE:
REVIEW	16 JUN 2026

PROJECT #: 2515

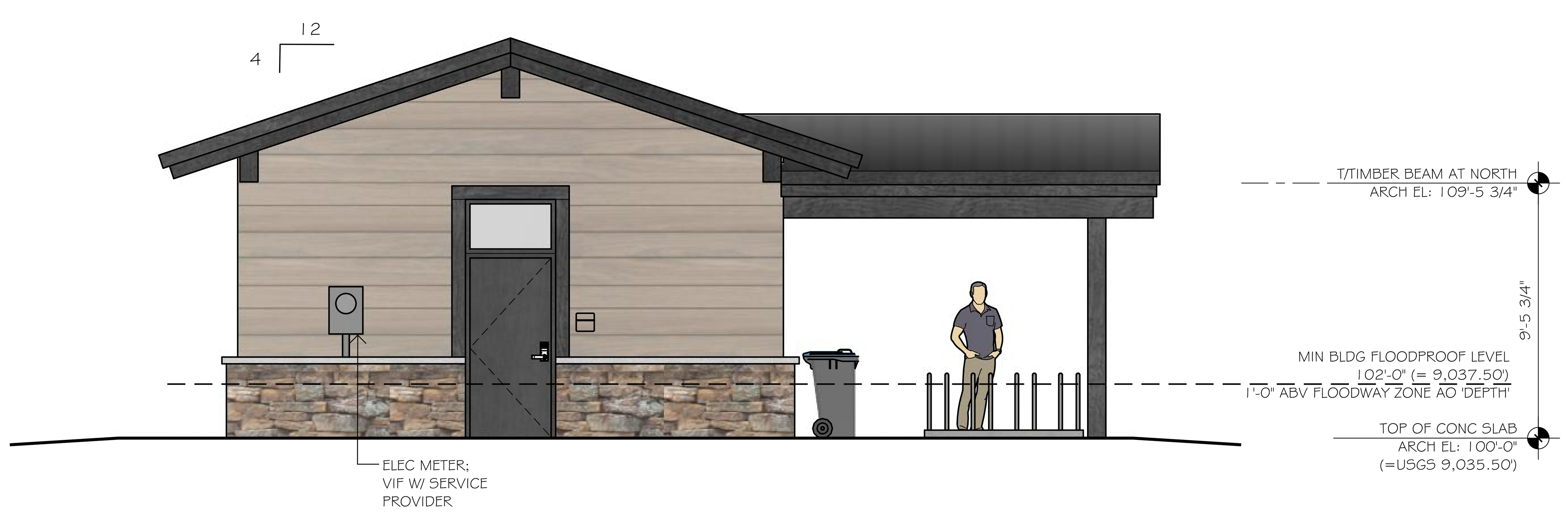
A2.1



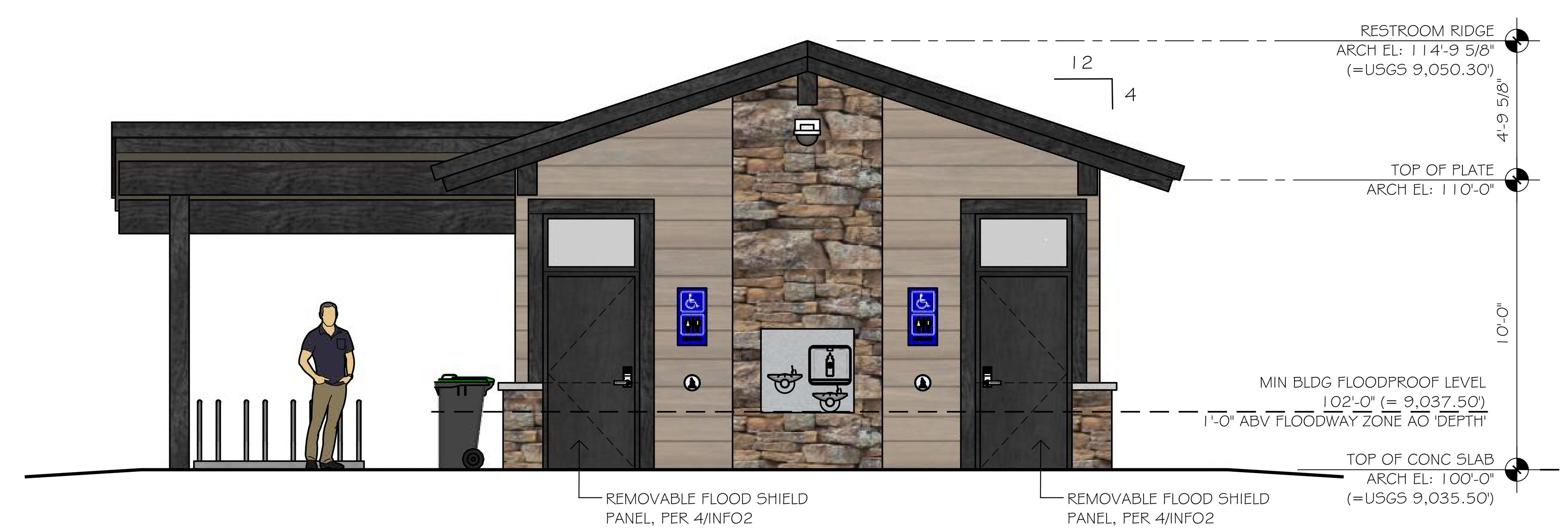
4 A3.1 WEST ELEVATION
SCALE: 1/4" = 1'-0"



2 A3.1 EAST ELEVATION
SCALE: 1/4" = 1'-0"



3 A3.1 NORTH ELEVATION
SCALE: 1/4" = 1'-0"



1 A3.1 SOUTH ELEVATION
SCALE: 1/4" = 1'-0"

0 1' 2' 4' 8'

PRELIMINARY - NOT FOR CONSTRUCTION

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PIONEER PARK
GALENA STREET (BETWEEN 5TH & 6TH AVENUES) LOTS 1-12 . BLOCK D
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE
EXTERIOR ELEVATIONS

ISSUE	DATE
REVIEW	16 JUN 2026

PROJECT# 2511

A3.1

4 / A3.2 NORTHWEST VIEW

SCALE: 1/4" = 1'-0"

2 / A3.2 NORTHEAST VIEW

SCALE: NTS

3 / A3.2 SOUTHWEST VIEW

SCALE: NTS

NOTE: RENDERINGS FOR PRESENTATION PURPOSES ONLY.

1 / A3.2 SOUTHEAST VIEW

SCALE: NTS

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PIONEER PARK

GALENA STREET (BETWEEN 5TH & 6TH AVENUES) LOTS 1-12 . BLOCK D
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE
3D MODEL VIEWS

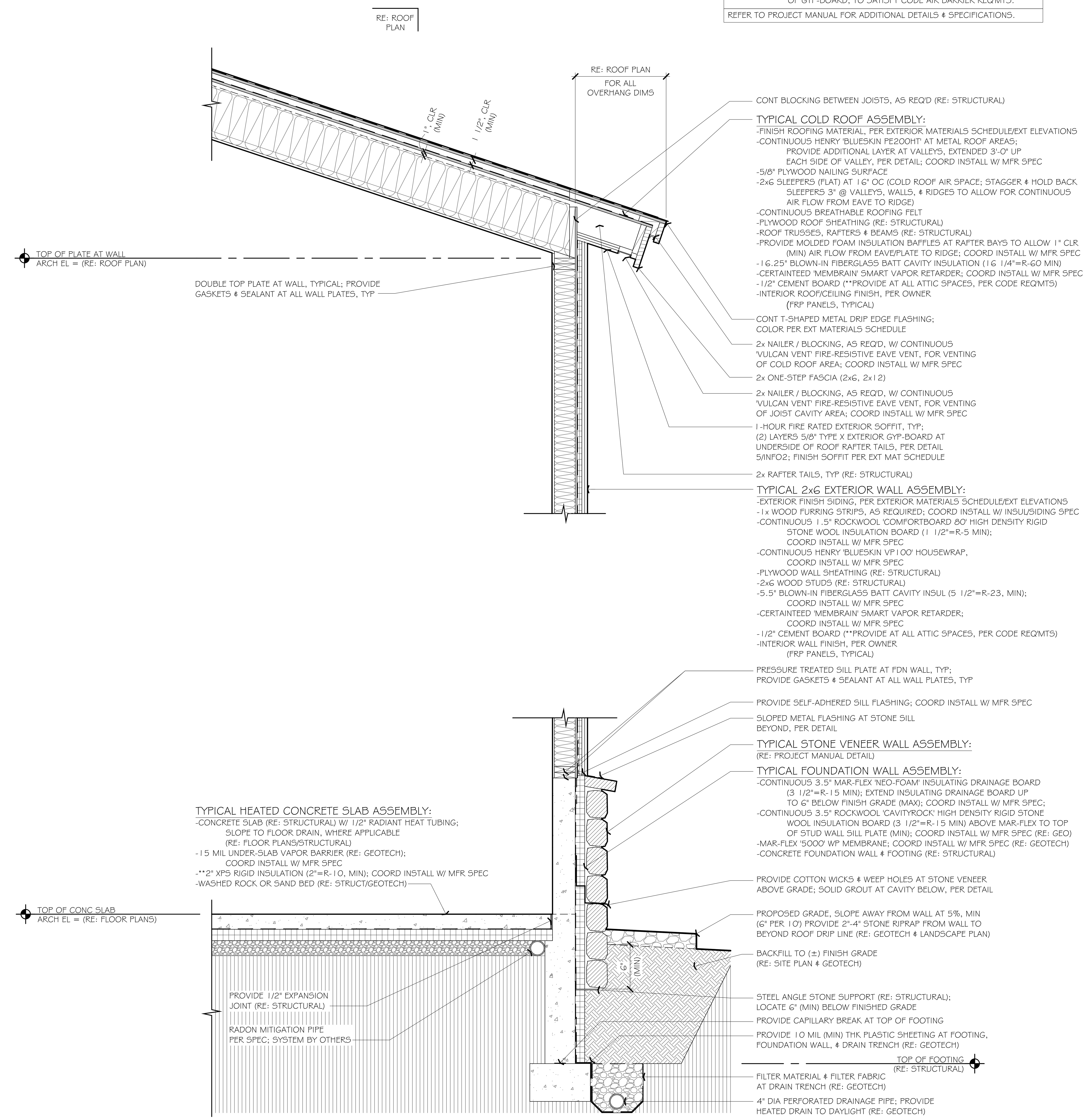
ISSUE	DATE
REVIEW	16 JUN 2026

PROJECT# 2511

A3.2

TYPICAL ASSEMBLY BID ALTERNATES:
**PROVIDE BID ALTERNATES FOR THE FOLLOWING TYPICAL ASSEMBLY ITEMS:
1) PROVIDE CONT 2" CLOSED-CELL SPRAY FOAM UNDER-SLAB INSUL (2"=R-10 MIN), IN LIEU OF 2" XPS RIGID UNDER-SLAB INSUL AT ALL INTERIOR HEATED CONCRETE FLOOR SLAB AREAS.
2) PROVIDE BARRICADE 'THERMO BRACE' AT ALL ATTIC SPACES, IN LIEU OF GYP-BOARD, TO SATISFY CODE AIR BARRIER REQ'MTS.

REFER TO PROJECT MANUAL FOR ADDITIONAL DETAILS & SPECIFICATIONS.



1 / A4.1 TYPICAL EXTERIOR WALL SECTION
SCALE: 3/4" = 1'-0"

PRELIMINARY - NOT FOR CONSTRUCTION

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PIONEER PARK
GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK D
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE
TYPICAL EXTERIOR WALL SECTION

ISSUE:	DATE:
REVIEW	16 JUN 2026

PROJECT #: 2515

A4.1

ALLEN-GUERRA
CRESTED BUTTE
BENJAMIN HENSON . ARCHITECT

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PRELIMINARY - NOT FOR CONSTRUCTION

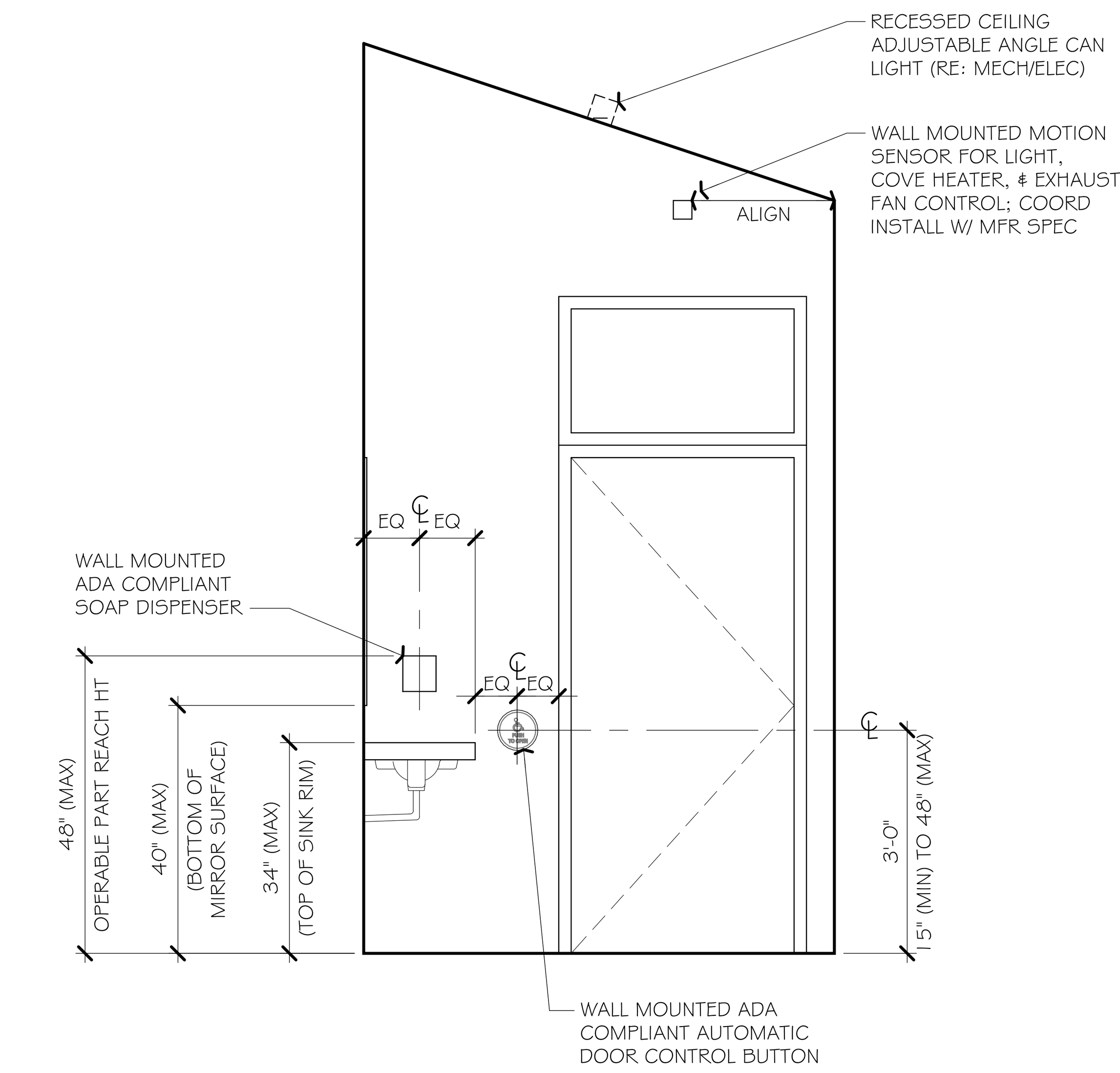
PIONEER PARK
GALENA STREET (BETWEEN 5TH & 6TH AVENUES) . LOTS 1-12 . BLOCK D
FRISCO . COLORADO

TITLE: RESTROOM STRUCTURE INTERIOR ELEVATIONS

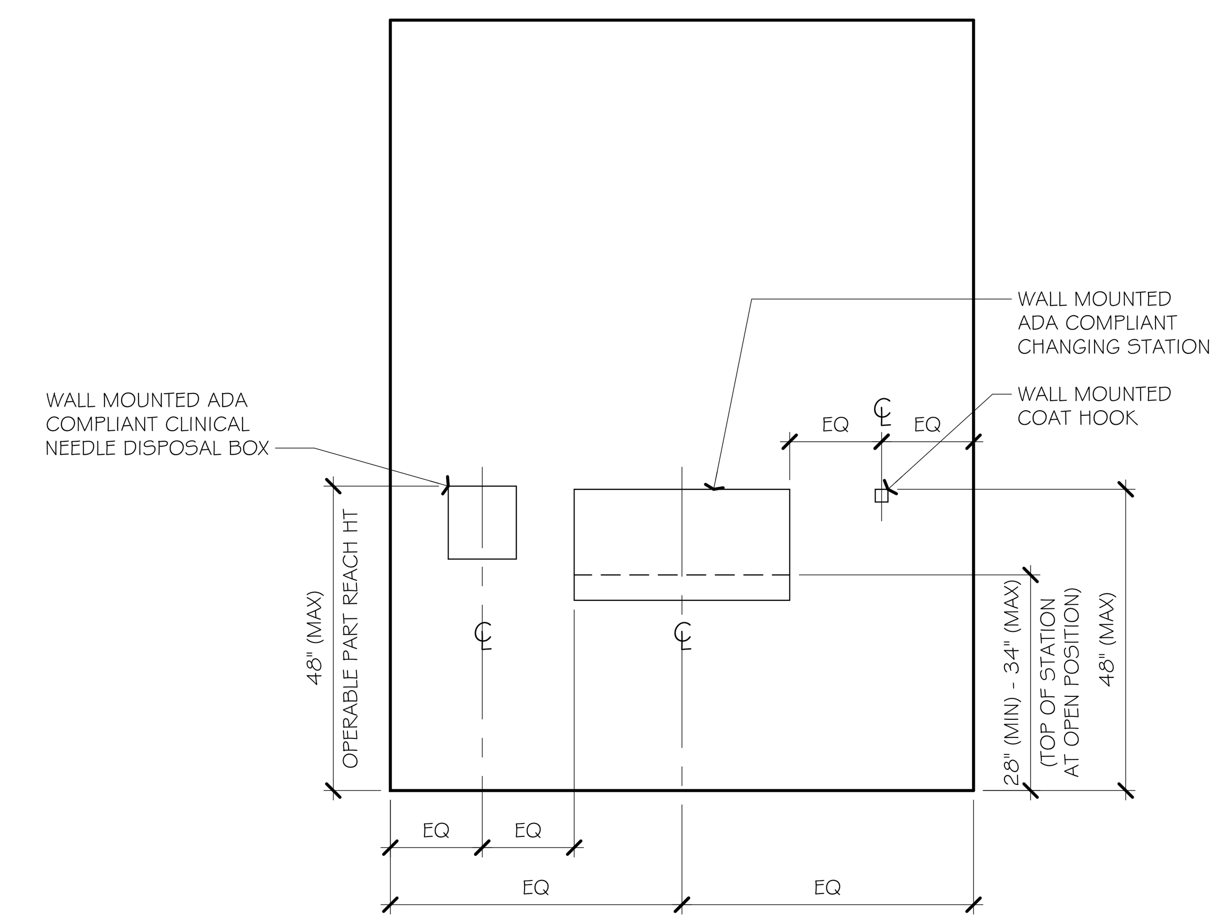
ISSUE:	DATE:
REVIEW	16 JUN 2026

PROJECT #: 2515

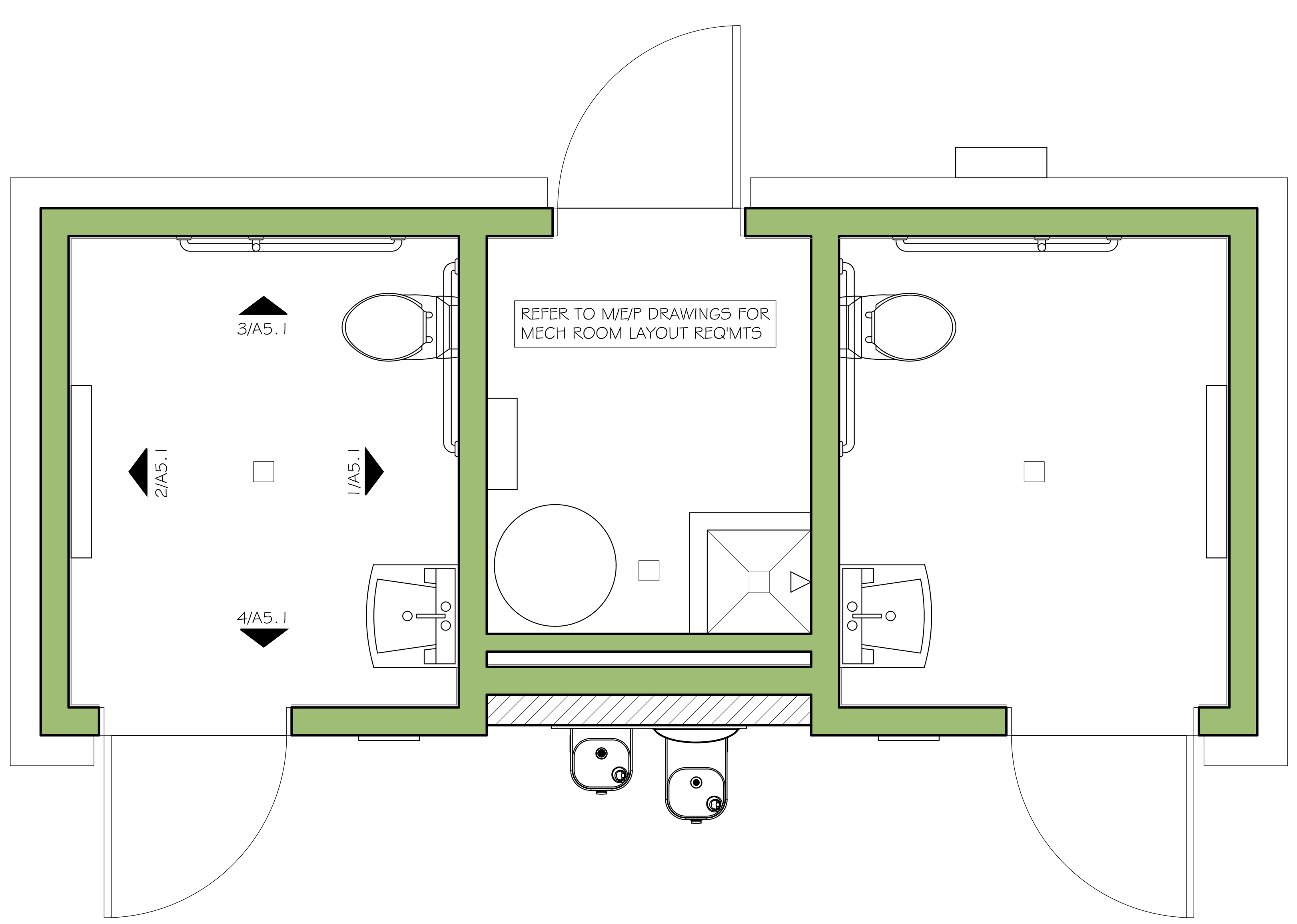
A5.1



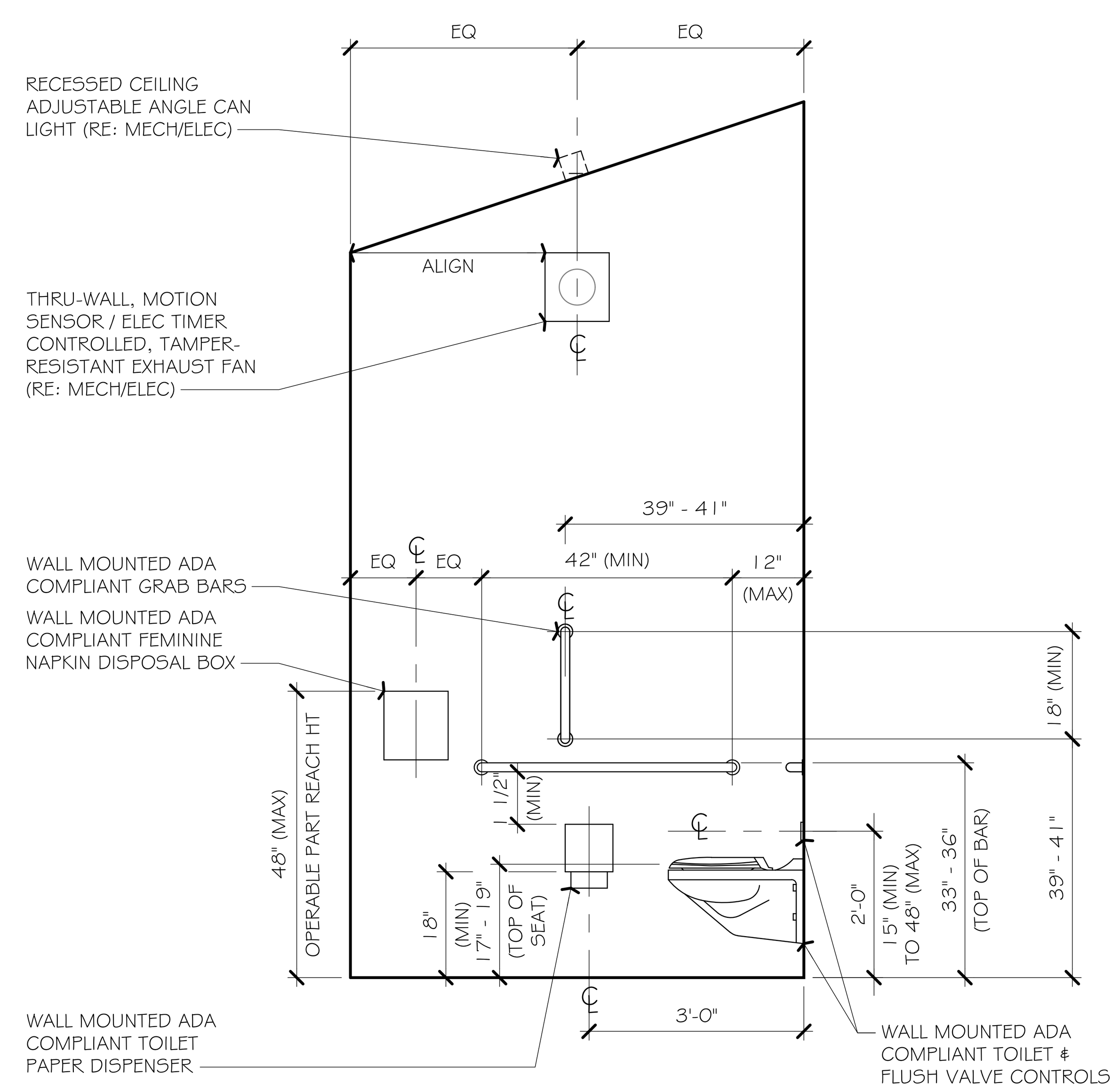
[RE: A0.1, A5 WELL AS ADA 2010 & ICC A117.1-2017 FOR ADD'L INFORMATION]
4 A5.1 INTERIOR ELEVATION - FACING SOUTH
SCALE: 1/2" = 1'-0"



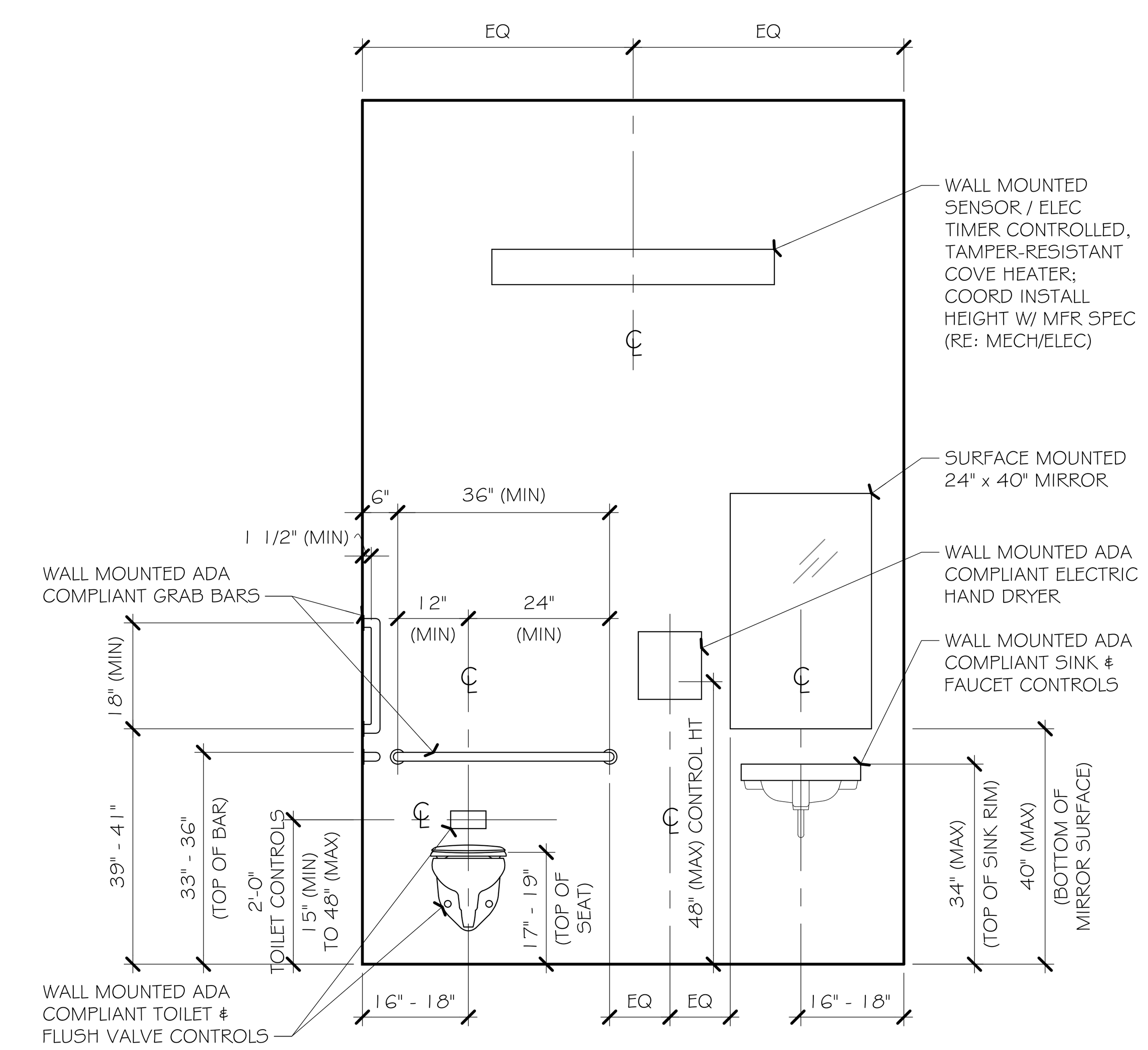
[RE: A0.1, A5 WELL AS ADA 2010 & ICC A117.1-2017 FOR ADD'L INFORMATION]
2 A5.1 INTERIOR ELEVATION - FACING WEST
SCALE: 1/2" = 1'-0"



[RE: A0.1, A5 WELL AS ADA 2010 & ICC A117.1-2017 FOR ADD'L INFORMATION]
5 A5.1 ENLARGED FLOOR PLAN
SCALE: 1/2" = 1'-0"



[RE: A0.1, A5 WELL AS ADA 2010 & ICC A117.1-2017 FOR ADD'L INFORMATION]
3 A5.1 INTERIOR ELEVATION - FACING NORTH
SCALE: 1/2" = 1'-0"



ADDITIONAL NOTES:
1) ALL DIMENSIONS ARE 'FINISH' DIMENSIONS (VIF).
2) REFER TO SHEET 0.1 FOR REQUIRED ADA FLOOR CLEARANCES & ADD'L REQ'D ADA FINISH DIMENSIONS.

[RE: A0.1, A5 WELL AS ADA 2010 & ICC A117.1-2017 FOR ADD'L INFORMATION]
1 A5.1 INTERIOR ELEVATION - FACING EAST
SCALE: 1/2" = 1'-0"

0 1' 2' 4'

STAFF REPORT

TO: MAYOR & TOWN COUNCIL

FROM: THAD RENAULD, TOWN ATTORNEY
JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER

RE: FIRST READING: ORDINANCE 26-12 ADDENDUM TO AMENDED & RESTATED GROUND LEASE (CHFA) FOR 101 WEST MAIN

DATE: JUNE 29, 2026

Summary & Background:

Town Council is asked to consider for First Reading Ordinance 26-12 authorizing an Addendum to the Amended and Restated 101 West Main Ground Lease between the Town of Frisco and West Main Apartments LLLP, for the affordable housing project located at 101 West Main Street.

The Addendum incorporates additional requirements requested by the Colorado Housing and Finance Authority (CHFA) as a condition of the Town's participation in CHFA's Affordable Housing Finance Fund Land Banking Program. The Addendum adds provisions required by CHFA to ensure compliance with the grant agreement and affordable housing covenant that encumber the property.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to “preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities.” This mission aligns with the Council’s strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:

The Town acquired the property located at 101 West Main Street using $5 million in grant funding provided through CHFA's Affordable Housing Finance Fund Land Banking Program. The property is subject to affordability restrictions and is being developed as a Low-Income Housing Tax Credit (LIHTC) affordable housing project by West Main Apartments LLLP.

The Town previously approved the Amended and Restated Ground Lease through Ordinance 26-16. As part of CHFA's review process, additional lease provisions were requested to protect CHFA's interests and ensure ongoing compliance with the affordability requirements associated with the grant funding.

Key Provisions of the Addendum

The Addendum adds a new section to the Ground Lease requiring:

- Compliance with all requirements of the CHFA affordability covenant during its term.
- Notification to CHFA of any uncured lease defaults.
- The ability for CHFA to cure certain defaults if other parties fail to do so.
- CHFA's prior written approval of future lease amendments.
- Confirmation that ground lease rent remains fixed as established in the lease.
- Inclusion of CHFA in notice requirements under the lease.

Financial Impact:

There is no direct financial impact associated with approval of the Addendum. Approval is necessary to maintain compliance with the Town's obligations under the CHFA grant agreement and preserve the benefits associated with the $5 million grant funding used to acquire the property.

Alignment with Strategic Plan:

The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:

- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:

Staff requests the Town Council review Ordinance 26-12 and consider first reading approval.

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 – Ordinance 26-12 Addendum to Amend & Restated Ground Lease
- Attachment 2 - First Addendum to Amended and Restated Ground Lease

TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
ORDINANCE 26-12

AN ORDINANCE APPROVING AN ADDENDUM TO THE GROUND LEASE AGREEMENT BETWEEN THE TOWN OF FRISCO AND WEST MAIN APARTMENTS LLLP, FOR PROPERTY LOCATED AT 101 WEST MAIN STREET, FOR THE PURPOSES OF AN AFFORDABLE HOUSING DEVELOPMENT.

WHEREAS, the Town of Frisco (the "Town") is a municipal corporation and political subdivision duly organized and existing under the Constitution and laws of the state of Colorado and its home rule charter; and

WHEREAS, West Main Apartments LLLP is the developer of affordable housing that holds a leasehold estate over certain real property that is commonly known as 101 West Main Street, Frisco, Colorado (the "Property"); and

WHEREAS, the Town and West Main Apartments LLLP intend that the Property be used to develop affordable housing and other incidental purposes (the "Project") in accordance with that certain Second Amended and Restated Development Agreement Between the Town of Frisco and NHPF West Main, LLC, ("NHPF WM") dated as of June 25, 2024 (the "Development Agreement") that has been assigned by NHPF WM to West Main Apartments LLLP with the consent of the Town; and

WHEREAS, under the Development Agreement, the Property is to be developed for affordable housing purposes in accordance with the Low Income Housing Tax Credit program ("LIHTC") created under the federal Tax Reform Act of 1986; and

WHEREAS, the Town received Five Million Dollars ($5,000,000.00) in grant funds (the "Grant Funds") from the Affordable Housing Finance Fund Land Banking Program administered by the Colorado Housing and Finance Authority ("CHFA") in order that the Town could acquire the Property from NHPF WM, restrict the Property by real covenant to affordable housing uses, and lease the Property back to the NHPF WM under a long term ground lease and, thereby, facilitate development of the Project; and

WHEREAS, the Town and CHFA have entered into that certain Affordable Housing Financing Fund Land Banking Program Grant Agreement dated to be effective as of February 25, 2025, (the "Grant Agreement"); and

WHEREAS, pursuant to the Grant Agreement, after the purchase of the Property by the Town, and prior to its lease-back to NHPF WM, the Town encumbered the Property by a real covenant in the form attached to the Town of Frisco and NHPF West Main, LLC, Purchase, Sale and Lease-Back Agreement for 101 Main (the "Agreement"); and

WHEREAS, Colorado Revised Statutes § 31-15-713(b) authorizes the Town to lease real property for periods of greater than one year, by ordinance, upon such terms and conditions as the Town Council may determine at a regular or special meeting; and

WHEREAS, by Town of Frisco Ordinance No. 26-16, the Town of Frisco approved the Amended and Restated Ground Lease Agreement under which the Property will be leased West Main Apartments LLLP (the "Ground Lease"); and

WHEREAS, pursuant to the Grant Agreement, CHFA has required certain revisions to the Ground Lease that are set forth in the Addendum to Amended and Restated 101 West Main Ground Lease that is attached hereto (the "Addendum"); and

WHEREAS, in consideration of the benefits of the Grant Agreement, the Town and West Main Apartments LLLP desire to revise the Ground Lease as set forth in the attached Addendum.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO:

Section 1. That the Mayor and Town Clerk are hereby authorized to execute and deliver the Addendum, and each and every document necessary or desirable to effectuate the terms of the Addendum, which Addendum is attached hereto and to be dated as of August ___, 2026.

Section 2. Severability. If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

Section 3. Effective Date. This ordinance shall take effect pursuant to the Home Rule Charter of the Town of Frisco, Colorado.

INTRODUCED, PASSED ON FIRST READING AND PUBLICATION AND POSTING ORDERED THIS 29TH DAY OF JUNE, 2026.

ADOPTED ON SECOND AND FINAL READING AND PUBLICATION BY TITLE ORDERED __ DAY OF ______, 2026.

TOWN OF FRISCO, COLORADO

____
Frederick J. Ihnken, Mayor

ATTEST:

____
Stacey Campbell, Town Clerk

ADDENDUM TO AMENDED AND RESTATED 101 WEST MAIN GROUND LEASE

This Addendum, dated effective July ______, 2026 (the "Effective Date"), is attached to, incorporated into, and forms part of the Amended and Restated101 West Main Ground Lease (the "Ground Lease"), dated July _______, 2026 by and between TOWN OF FRISCO, a Colorado home rule municipal Corporation ("Landlord") and WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership ("Tenant").

1. Effective Date. This Addendum and the parties' obligations under this Addendum will be effective as of the date set forth above.

2. Definitions. Capitalized terms used and not otherwise defined in this Addendum shall have the definitions given them in the Ground Lease.

3. CHFA Provisions. For as long as the CHFA Covenant (as defined in the Ground Lease) is in effect, the Ground Lease shall be amended to include the following Section 19:

SECTION 19. CHFA REQUIREMENTS.

19.1 **Requirements**. Notwithstanding anything contained herein to the contrary, Landlord and Tenant agree that the following terms shall apply to the Ground Lease throughout the term of the CHFA Covenant.

(a) Landlord and Tenant agree to comply with all requirements and limitations of the CHFA Covenant throughout the term of the CHFA Covenant.

(b) In the Event of a Default that is left uncured beyond any and all cure periods contained within this Lease, Landlord and Tenant agree to notify CHFA of such ongoing Events of Default pursuant to the terms of Section 8 herein.

(c) In the Event of a Default that is not cured by Landlord, Investor Member, or the most senior Permitted Leasehold Mortgagee, CHFA retains the right to cure such default pursuant to the terms of Section 8 herein.

(d) Any amendment to the Lease must be subject to CHFA's prior written approval, in addition to those terms set forth in Section 18.3 herein.

(e) Landlord and Tenant agree that the Rent is a fixed amount as set forth in Section 3.1 herein.

4. Notices. The parties shall provide copies of any notices it sends to the other parties hereto at the addresses and in the manner set forth in the Ground Lease, which shall include notices to CHFA. The parties may change their addresses for notice by notifying the other parties in the manner provided in the Ground Lease.

5. Conflicts. If any provision of this Addendum conflicts with any provision of the Ground Lease or any other document, then the provisions of this Addendum control. Except as specifically amended hereby, all of the terms and the provisions of the Ground Lease remain in full force and effect, without modification.

6. Severability. If any provision of this Addendum is held to be invalid or unenforceable, such defect will not affect other provisions or applications that can be given effect without the invalid or unenforceable provisions or applications, and to this end, the provisions and applications of this Addendum are severable.

7. Waiver. No waiver of satisfaction of a condition or non-performance of an obligation under this Addendum will be effective unless it is in writing and signed by the party granting the waiver.

8. Governing Law. The laws of the State of Colorado, without giving effect to its principles of conflicts of law, govern all adversarial proceedings brought by the parties arising out of this Addendum, whether their claims are sound in contract, tort, or otherwise.

14. Counterparts. This Addendum may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties.

(*signature pages follow*)

The parties have caused this Addendum to be duly executed as of the date first written above.

LANDLORD

TOWN OF FRISCO, a Colorado home rule municipal corporation

By: ______________________________
Frederick J. Ihnken, Mayor

TENANT

WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership

By: NHPF West Main GP, LLC, a Colorado limited liability company, its General Partner

By: The NHP Foundation, a District of Columbia non-profit corporation, its Manager

By: ________________________
John Welsh,
Senior Vice President

STAFF REPORT

TO: MAYOR & TOWN COUNCIL

FROM: THAD RENAULD, TOWN ATTORNEY
JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER

RE: TERMINATION OF GROUND LEASE AND MEMORANDUM OF GROUND LEASE BETWEEN THE TOWN OF FRISCO AND NHPF WEST MAIN, LLC FOR 101 WEST MAIN

DATE: JUNE 29, 2026

Summary & Background:

Town staff are bringing forth a Termination of Ground Lease and Memorandum of Ground Lease for 101 West Main Street, between the Town of Frisco and NHPF West Main, LLC, for the affordable housing project located at 101 West Main Street for Town Council consideration.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to "preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities." This mission aligns with the Council's strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:

The Town of Frisco has been requested to execute a Termination of Ground Lease and Memorandum of Ground Lease with NHPF West Main, LLC, related to the 101 West Main Apartments affordable housing project. The agreement terminates the Ground Lease dated August 27, 2025, including all amendments and the associated Memorandum of Ground Lease recorded in the Summit County real property records, for 101 West Main.

The purpose of the agreement is to formally terminate the existing ground lease arrangement between the Town and NHPF West Main, LLC. Upon execution, the Ground Lease will be terminated in its entirety and will no longer have any force or effect. The agreement provides for a mutual release of claims and obligations arising under the previous Ground Lease, allowing the parties to move forward with the recent Council approved Ground Lease between the Town and West Main Apartments LLLP.

Financial Impact:
There is no direct fiscal impact associated with execution of the agreement.

Alignment with Strategic Plan:
The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:
- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:
Staff requests the Town Council review the Termination of Ground Lease and Memorandum of Ground Lease, for 101 W. Main.

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 –Termination of Ground Lease

TERMINATION OF GROUND LEASE AND MEMORANDUM OF GROUND LEASE

This Termination of Ground Lease and Memorandum of Ground Lease ("Termination"), dated July __, 2026 ("Effective Date"), is between the Town of Frisco, a Colorado home rule municipal corporation, having an address of P.O. Box 4100, Frisco, Colorado ("Town"), and NHPF West Main, LLC, a Colorado limited liability company, having an address of c/o The NHP Foundation, 1401 H Street NW, Suite 1000, Washington, DC 20005 ("NHPF").

The Town and NHPF entered into a Ground Lease dated August 27, 2025, as amended by that certain Addendum to 101 West Main Ground Lease dated August 27, 2025, and further amended by that Second Addendum to 101 West Main Ground Lease dated August 27, 2025, and as evidenced by Memorandum of Ground Lease recorded August 28, 2025 under Reception No. 1358628 in the real property records of Summit County, Colorado ("Ground Lease") for the ground lease of certain real property known as 101 W. Main, Frisco, Colorado, and further described in Exhibit A attached hereto ("Land").

The Town and NHPF mutually desire to terminate the Agreement as of the Effective Date.

The parties therefore agree as follows:

1. Termination. The Town and NHPF agree and acknowledge that the Ground Lease is terminated in its entirety as of the Effective Date. As of the Effective Date, the Ground Lease is of no further force or effect.

2. Release. The Town and NHPF each release and discharge each other from all claims and obligations related to the Ground Lease.

3. Counterparts. This Termination may be executed electronically and in multiple counterparts, each of which constitutes an original and all of which when taken together constitute the same document.

(*signature page to follow*)

The parties execute this Termination of Ground Lease as of the date first written above.

TOWN:

TOWN OF FRISCO, a Colorado home rule municipal corporation

By: ______________________________
Frederick J. Ihnken, Mayor

STATE OF COLORADO §

§

COUNTY OF SUMMIT §

This instrument was acknowledged before me on or about this _______ day of _________ 2026 by Frekerick J. Ihnken, as Mayor of the Town of Frisco, a Colorado home rule municipal corporation.

Witness my hand and seal.

My commission expires: ______________

____

NOTARY PUBLIC

NHPF:

NHPF WEST MAIN, LLC, a Colorado limited liability company

By: The NHP Foundation, a District of Columbia non-profit corporation, its Managing Member

By: ________________________
John Welsh,
Senior Vice President

STATE OF __________ §

§

COUNTY OF __________ §

The foregoing instrument was acknowledged before me this . day of _____________ 2026, by John Welsh, as Senior Vice President of The NHP Foundation, as Managing Member of NHPF West Main, LLC, a Colorado limited liability company.

Witness my hand and seal.

My commission expires: ______________

____

NOTARY PUBLIC

Exhibit A

Legal Description of Land

LOT B-1, AMENDED WEST FRISCO 70, FILING NO. 2, ACCORDING TO THE PLAT FILED APRIL 16, 1974 UNDER RECEPTION NO. 140796, COUNTY OF SUMMIT, STATE OF COLORADO.

STAFF REPORT

TO: MAYOR & TOWN COUNCIL

FROM: THAD RENAULD, TOWN ATTORNEY
JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER

RE: DECLARATION AND PLAT OF SMALL PLANNED COMMUNITY FOR 101 WEST MAIN

DATE: JUNE 29, 2026

Summary & Background:

Town Council is asked to consider the Declaration of Small Planned Community for 101 West Main between the Town of Frisco and West Main Apartments LLLP, for the affordable housing project located at 101 West Main Street.

The proposed Declaration establishes the legal framework governing ownership, operation, maintenance, and management of the mixed-use affordable housing development. The declaration creates a small planned community under the Colorado Common Interest Ownership Act (CCIOA) and facilitates the long-term ownership structure necessary for the West Main Apartments affordable housing project.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to "preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities." This mission aligns with the Council's strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:

The development consists of a single building containing two ownership units: (1) a residential housing unit consisting of 52 income-restricted affordable apartments financed through Low-Income Housing Tax Credits (LIHTC), and (2) a commercial condo unit consisting of approximately 664 square feet of ground-floor commercial space.

The declaration and plat establishes a small planned community with only two units and no future development rights. The structure allows separate ownership of the affordable housing component and commercial component while creating a shared governance framework for common building elements, maintenance responsibilities, insurance requirements, easements, and operating costs. The document expressly exempts the project from most provisions of CCIOA because the development contains fewer than twenty units as defined by statute and does not reserve future development rights.

Ownership Structure
The project will be divided into two primary units:

- The Housing Unit, consisting of the three-story residential portion containing 52 affordable rental apartments.
- The Commercial Unit, consisting of the ground-floor commercial space intended to be acquired by the Town following project completion pursuant to a Forward Purchase and Sale Agreement.

The declaration recognizes that the Housing Unit qualifies for affordable housing tax exemptions through the Frisco Community Housing Development Authority and requires cooperation among the owners and Association to preserve available tax exemptions and affordability-related benefits. The project is specifically intended to support long-term affordable housing and compliance with LIHTC requirements.

Financial Impact:
At this time there is no current financial impact related to the approval of the Declaration and Plat of Small Planned Community for 101 West Main

Alignment with Strategic Plan:
The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:

- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:
Staff requests the Town Council review the declaration as presented

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 – 101 West Main Small Planned Community - Declaration
- Attachment 2 – 101 West Main Small Planned Community - Plat

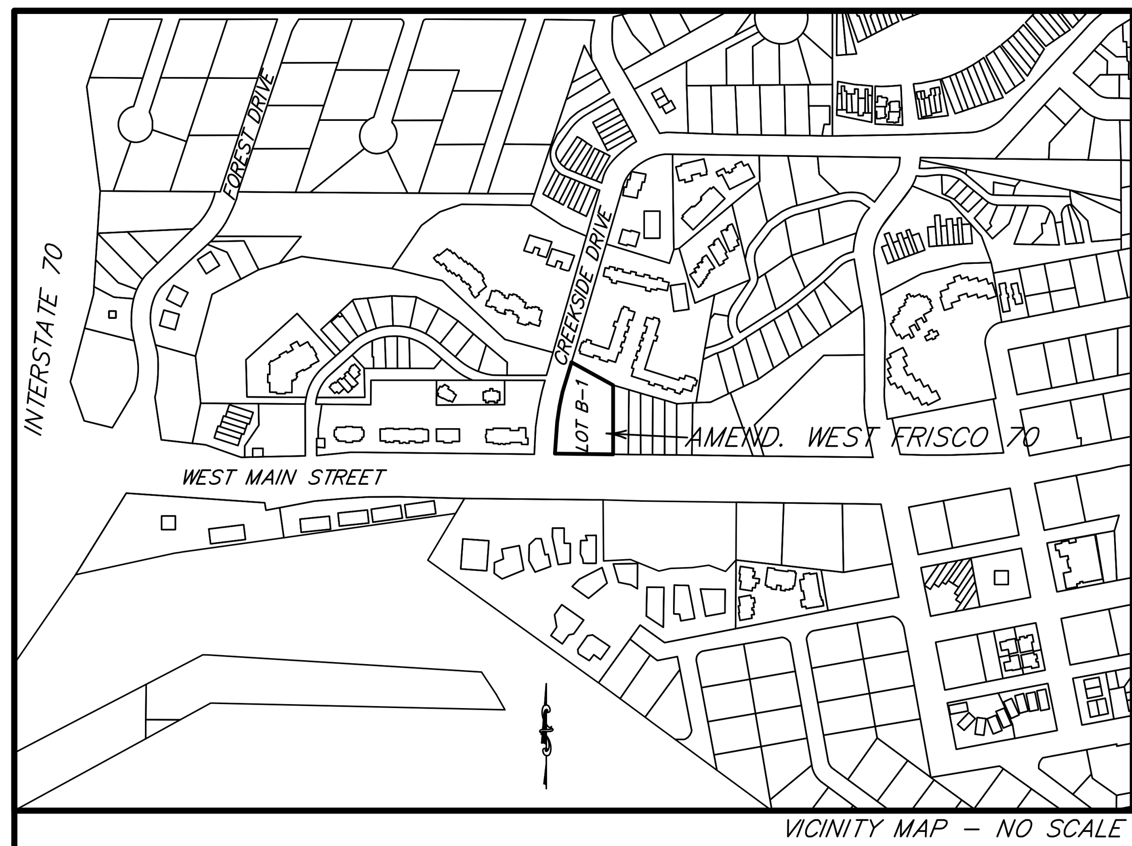
MAP OF 101 W. MAIN SMALL PLANNED COMMUNITY

A RESUBDIVISION OF LOT B-1, AMENDED WEST FRISCO 70, FILING NO. 2

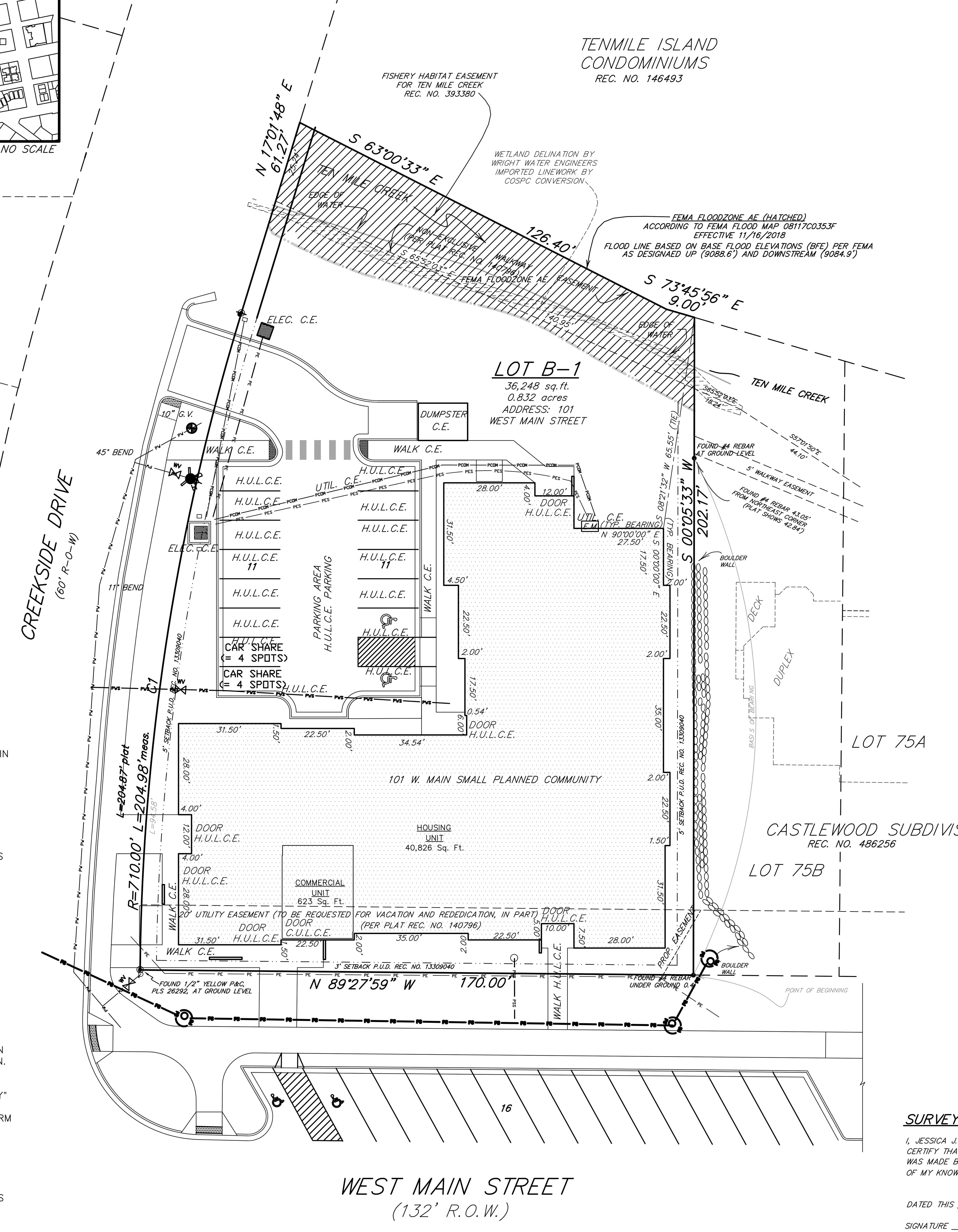
ACCORDING TO THE PLAT RECORDED APRIL 16, 1974 AT REC. NO. 140796
LOCATED IN THE NE 1/4 OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 78 WEST OF THE 6TH P.M.

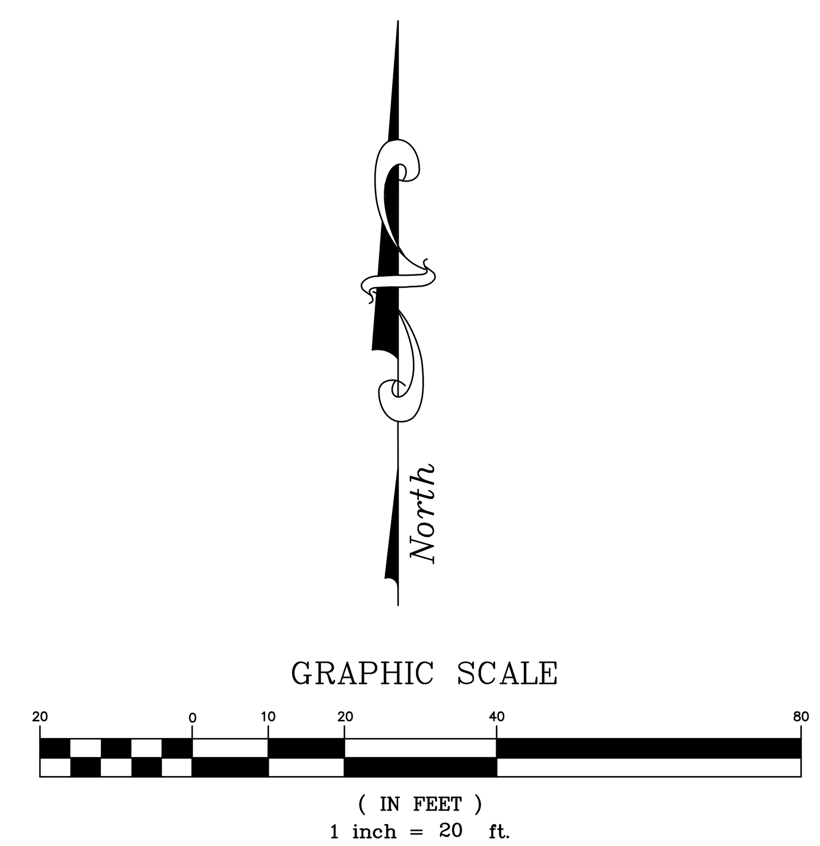
TOWN OF FRISCO, SUMMIT COUNTY, COLORADO

SHEET 1 OF 5



VICINITY MAP - NO SCALE





LEGEND

◉	FOUND REBAR & PLASTIC CAP (PLS 26292)
•	FOUND No. 4 REBAR
C.E.	COMMON ELEMENT
H.U.L.C.E.	HOUSING UNIT LIMITED COMMON ELEMENT
C.U.L.C.E.	COMMERCIAL UNIT LIMITED COMMON ELEMENT

SURVEY NOTES:

1. THE PROPERTY DESCRIBED IN THE LEGAL DESCRIPTION (THE "PROPERTY") IS SUBJECT TO THIS INITIAL PLANNED COMMUNITY MAP WHICH, TOGETHER WITH THE DECLARATION OF FOR WEST MAIN APARTMENTS PLANNED COMMUNITY (A COMMON INTEREST COMMUNITY) (THE "DECLARATION"), CREATES TWO PRIMARY UNITS FOR THE WEST MAIN APARTMENTS PLANNED COMMUNITY. THIS IS THE INITIAL PLANNED COMMUNITY MAP AS DEFINED IN THE DECLARATION. FOLLOWING COMPLETION OF THE IMPROVEMENTS TO BE LOCATED ON THE PROPERTY, THE POST-COMPLETION PLANNED COMMUNITY MAP WILL BE RECORDED, WHICH WILL SUPERSEDE THIS INITIAL PLANNED COMMUNITY MAP.

2. THE BOUNDARIES OF EACH PRIMARY UNIT IS GRAPHICALLY DEPICTED UPON THIS MAP AND DESCRIBED HEREON AND ARE FURTHER LEGALLY DESCRIBED IN THE DECLARATION.

3. ALL TERMS USED HEREIN SHALL HAVE THE SAME DEFINITION AS PROVIDED IN THE DECLARATION FOR THE TWO (2) PRIMARY UNITS FOR WEST MAIN APARTMENTS PLANNED COMMUNITY UNLESS OTHERWISE DEFINED HEREIN.

4. PROPOSED BUILDING DIMENSIONS ARE FROM FLOOR PLANS PROVIDED BY ALLEN-GUERRA ARCHITECTURE. BUILDING ELEVATIONS OF FUTURE BUILDINGS ARE FROM LINE WORK PROVIDED FROM SAID ARCHITECTS.

5. BASIS OF BEARING IS THE EAST PROPERTY LINE OF LOT B-1 BEING S00°05'33"W ACCORDING TO THE PLAT AT REC. NO. 140796. ALL MONUMENTS FOUND AND DESCRIBED AS SHOWN.

6. BENCHMARK: THE SITE BENCHMARK IS THE SOUTHWEST PROPERTY CORNER, BEING A #4 REBAR AND YELLOW PLASTIC CAP STAMPED PLS 26292. USGS DATU IS NAVD88. ELEVATION = 9095.62' AT TOP OF CAP.

7. THE UNITS OF MEASUREMENT FOR THIS SURVEY ARE U.S. SURVEY FEET.

8. THE EXACT AS-BUILT DIMENSIONS OF EACH PRIMARY UNIT SHOW ON THIS INITIAL MAP WILL BE MEASURED UPON COMPLETION AND SHOWN IN THE POST-COMPLETION PLANNED COMMUNITY MAP.

9. THE BOUNDARIES OF EACH PRIMARY UNIT ARE GRAPHICALLY DEPICTED ON THIS MAP AND DESCRIBED HEREON AND ARE FURTHER LEGALLY DESCRIBED IN THE DECLARATION.

10. UNLESS OTHERWISE DEFINED ON THIS MAP, ALL COMMON TERMS USED ON THIS MAP SHALL HAVE THE MEANING ASCRIBED TO THEM IN THE DECLARATION.

11. THIS MAP IS THE "INITIAL PLANNED COMMUNITY MAP" AS SUCH TERM IS DEFINED IN THE DECLARATION AND CREATES A "COMMON INTEREST COMMUNITY" AS SUCH TERM IS DEFINED AT SECTION 38-33-3-103(8) OF THE COLORADO COMMON INTEREST OWNERSHIP ACT ("CCIOA"), AND IS THE "MAP" AS SUCH TERM IS DEFINED AT SECTION 38-33.3-103(19.5) OF CCIOA.

12. UNDERGROUND UTILITIES ARE SHOWN PER LOCATES PERFORMED BY BASLINE LOCATING ON DECEMBER 14, 2022

13. FEMA FLOODLINE BASED ON FEMA FLOOD MAP 08117C0353F, EFFECTIVE 11/16/2018. THE SUBJECT PROPERTY LIES BETWEEN BASE FLOOD ELEVATIONS OF 9084.9' AND 9088.6'.

14. TITLE COMMITTMENT BY LAND TITLE GUARANTEE COMPANY ORDER NO. ABD20217938-7 DATED 06/14/2026 USED FOR THIS SURVEY.

NOTE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

CURVE TABLE

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	710.00'	204.98'	204.27'	N 08°45'33" E	16°32'29"

SURVEYOR'S CERTIFICATE:

I, JESSICA J. KOETTERITZ, BEING A REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS MAP OF 101 W. MAIN SMALL PLANNED COMMUNITY WAS MADE BY ME AND UNDER MY SUPERVISION AND THAT BOTH ARE ACCURATE TO THE BEST OF MY KNOWLEDGE. STEEL PINS AND/OR BRASS CAP MONUMENTS WERE SET AT ALL BOUNDARY CORNERS.

DATED THIS __________ DAY OF ______________, AD 20 _____.

SIGNATURE ______________________________
JESSICA J. KOETTERITZ
COLORADO REGISTRATION NO. 38855

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR
JESSICA J. KOETTERITZ
38855

OWNER'S CERTIFICATE:

KNOW ALL PERSONS BY THESE PRESENTS: TOWN OF FRISCO
BEING THE OWNER OF THE LAND DESCRIBED AS FOLLOWS:

LOT B-1, AMENDED WEST FRISCO 70, FILING NO. 2
SECTION 34, TOWNSHIP 5 SOUTH, RANGE 78 WEST of the 6th P.M.
TOWN OF FRISCO, SUMMIT COUNTY, COLORADO

UNDER THE NAME AND STYLE OF "MAP OF 101 W. MAIN SMALL PLANNED COMMUNITY"

HAS LAID OUT, PLATTED AND SUBDIVIDED SAME AS SHOWN ON THIS PLAT, AND BY THESE PRESENTS DO HEREBY DEDICATE TO THE PERPETUAL USE OF THE TOWN OF FRISCO, STATE OF COLORADO, THE STREETS, ALLEYS, ROADS AND OTHER PUBLIC AREAS AS SHOWN HEREON AND HEREBY DEDICATE THOSE PORTIONS OF LAND LABELED AS EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES AS SHOWN HEREON.

IN WITNESS WHEREOF, SAID OWNER, TOWN OF FRISCO, HAS CAUSED ITS NAME TO HEREUNTO

BE SUBSCRIBED THIS _________ DAY OF _______________, A.D. 20______.

BY: TOWN OF FRISCO

____

BY: ______________________

AS: ___________ OF TOWN OF FRISCO

NOTARIALS:

STATE OF ___________)
)SS
COUNTY OF ___________)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS __________ DAY

OF _______________, AD 20____, BY _______________, AS ________
OF TOWN OF FRISCO

WITNESS MY HAND AND OFFICIAL SEAL:

______________________ MY COMMISSION EXPIRES __________

NOTARY PUBLIC

TITLE COMPANY'S CERTIFICATE:

______________ TITLE COMPANY DOES HEREBY CERTIFY THAT IT HAS EXAMINED THE TITLE TO ALL LANDS AS SHOWN HEREON AND TITLE TO SUCH LANDS IS IN THE DEDICATOR FREE AND CLEAR OF ALL LIENS, TAXES, AND ENCUMBRANCES, EXCEPT AS FOLLOWS:

____

____

DATED THIS _________ DAY OF _______________, 20_____ .

____
AGENT

FRISCO PLANNING COMMISSION APPROVAL:

THE PLANNING COMMISSION OF FRISCO, COLORADO, REPRESENTED BY THE COMMISSION CHAIRMAN, DOES HEREBY AUTHORIZE AND APPROVE THIS MAP OF THE ABOVE PLANNED COMMUNITY

ON THIS _________ DAY OF _______________, AD_________.

BY: ______________________
CHAIRMAN

FRISCO TOWN COUNCIL APPROVAL:

THE WITHIN "MAP OF 101 W. MAIN SMALL PLANNED COMMUNITY" IS APPROVED BY THE TOWN COUNCIL OF FRISCO, COLORADO, REPRESENTED BY THE MAYOR,

FOR FILING THIS _________ DAY OF _______________, AD _______.

THE DEDICATION OF THE PUBLIC WAYS SHOWN HEREON WILL NOT BE ACCEPTED UNTIL SAID PUBLIC WAYS HAVE BEEN SATISFACTORILY COMPLETED TO THE TOWN'S SPECIFICATIONS BY THE SUBDIVIDER. UPON SUCH SATISFACTORY COMPLIANCE, THE TOWN COUNCIL OF THE TOWN OF FRISCO MAY ADOPT A RESOLUTION ACCEPTING SAID DEDICATION OF PUBLIC WAYS AND DULY RECORD SUCH ACCEPTANCE.

BY: ______________________
MAYOR

ATTEST: ______________________
TOWN CLERK

TREASURER'S CERTIFICATE:

I THE UNDERSIGNED DO HEREBY CERTIFY THAT THE ENTIRE AMOUNT OF TAXES AND ASSESSMENTS DUE AND PAYABLE AS OF ______________________, UPON ALL PARCELS OF REAL ESTATE DESCRIBED ON THIS PLAT ARE PAID IN FULL.

DATED THIS ______________________DAY OF___________,20_____.

SIGNATURE______________________
SUMMIT COUNTY TREASURER

SUMMIT COUNTY CLERK & RECORDER'S ACCEPTANCE:

THIS PLAT WAS ACCEPTED FOR FILING IN THE OFFICE OF THE SUMMIT COUNTY

CLERK AND RECORDER ON THIS _________ DAY OF _______________, AD 20_____

AND FILED FOR RECORD AT ______.M., UNDER RECEPTION NUMBER _______________.

SIGNATURE ______________________
SUMMIT COUNTY CLERK AND RECORDER/DEPUTY

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MAP OF 101 W. MAIN SMALL PLANNED COMMUNITY

RECORDED _____________ AT REC. NO. _____________.

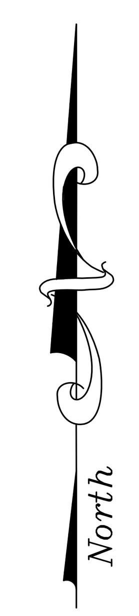
Drawn GW/RRJ/DB/EH/JJK	Dwg SHEET 1	Project 14089_22
Checked JJK	Date 06/21/2026	Sheet 1 of 5

RANGE WEST INC.
ENGINEERS & SURVEYORS
P.O. Box 589
Silverthorne, CO 80498 970-468-6281

MAP FOR 101 W. MAIN SMALL PLANNED COMMUNITY

LOT B-1, AMENDED WEST FRISCO 70, FILING NO. 2

ACCORDING TO THE PLAT RECORDED APRIL 16, 1974 AT REC. NO. 140796
LOCATED IN THE NE 1/4 OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 78 WEST OF THE 6TH P.M.
TOWN OF FRISCO, SUMMIT COUNTY, COLORADO
SHEET 2 OF 5



C.U.L.C.E. = COMMERICAL UNIT LIMITED COMMON ELEMENT
H.U.L.C.E. – HOUSING UNIT LIMITED COMMON ELEMENT

NOTE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

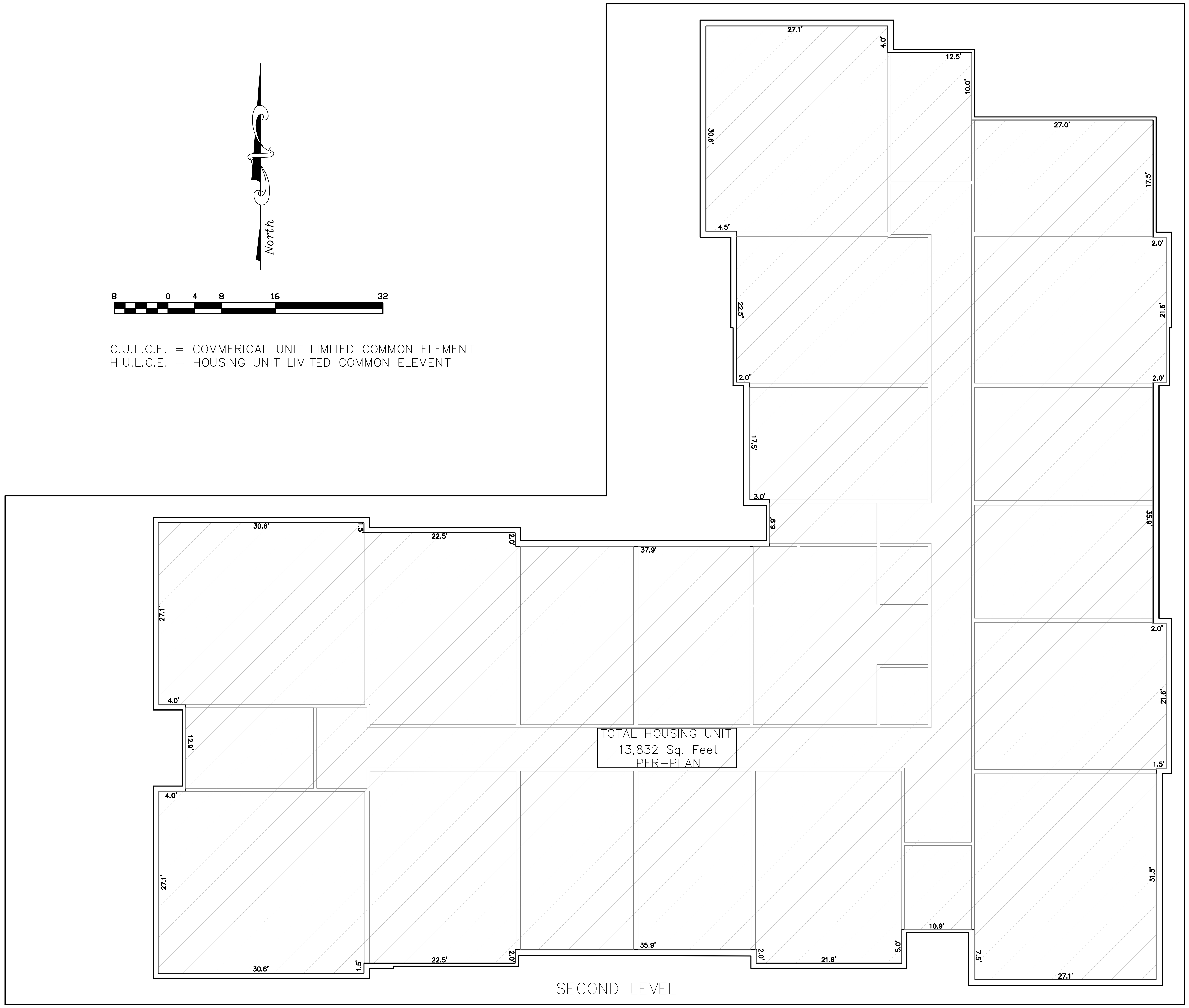
Drawn EH/JK	Dwg SHEET 2	Project 14089_22
Checked JJK	Date 06/18/2026	Sheet 2 of 5

R A N G E W E S T INC.
ENGINEERS & SURVEYORS
P.O. Box 589
Silverthorne, CO 80498 970-468-6281

MAP FOR 101 W. MAIN SMALL PLANNED COMMUNITY
LOT B-1, AMENDED WEST FRISCO 70, FILING NO. 2

ACCORDING TO THE PLAT RECORDED APRIL 16, 1974 AT REC. NO. 140796
LOCATED IN THE NE 1/4 OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 78 WEST OF THE 6TH P.M.
TOWN OF FRISCO, SUMMIT COUNTY, COLORADO
SHEET 3 OF 5

C.U.L.C.E. = COMMERICAL UNIT LIMITED COMMON ELEMENT
H.U.L.C.E. – HOUSING UNIT LIMITED COMMON ELEMENT



COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR 38855

NOTE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

Drawn EH/JK	Dwg SHEET 3	Project 14089_22
Checked JJK	Date 06/18/2026	Sheet 3 of 5

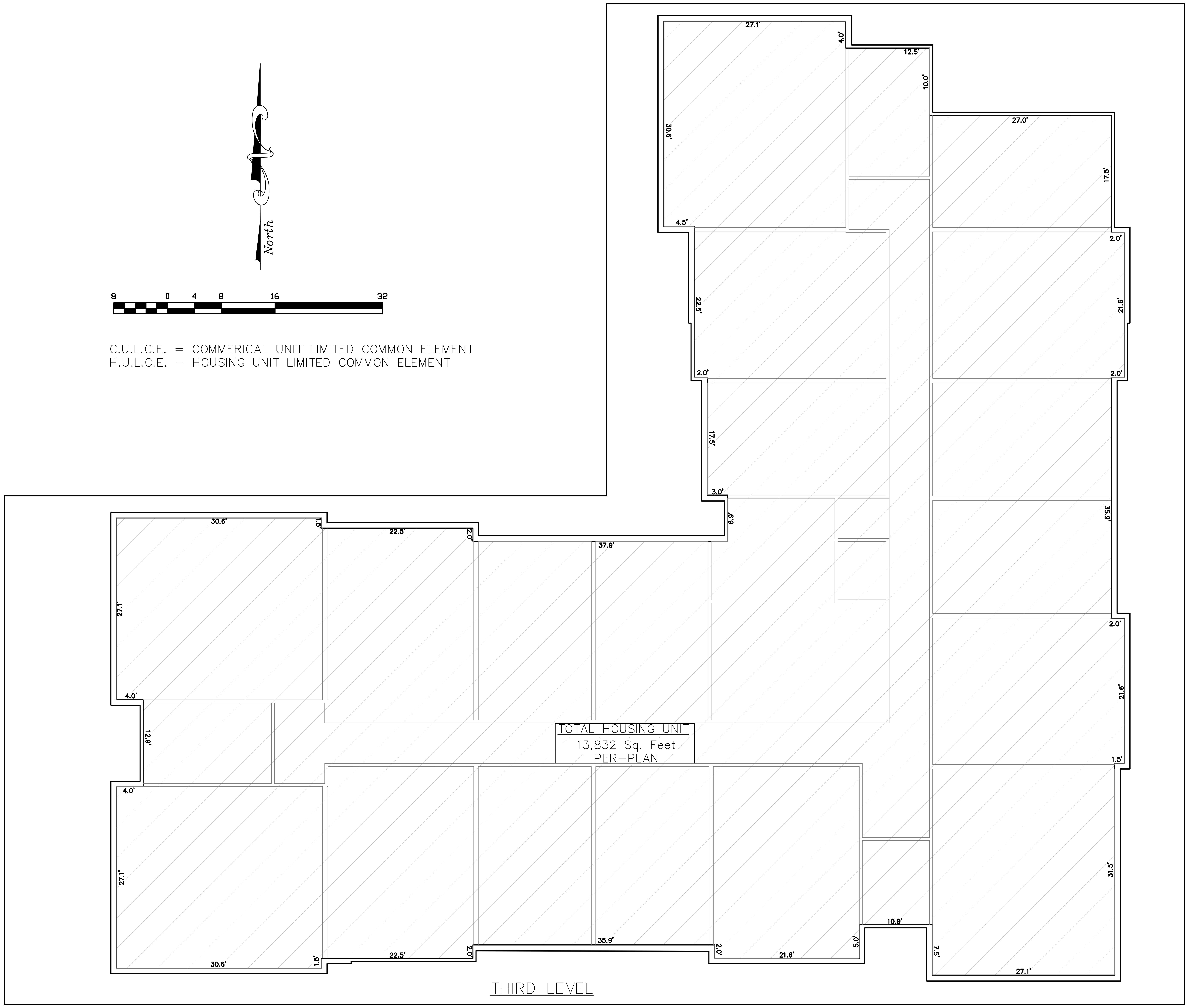
RANGE WEST INC.
ENGINEERS & SURVEYORS
P.O. Box 589
Silverthorne, CO 80498 970-468-6281

MAP FOR 101 W. MAIN SMALL PLANNED COMMUNITY

LOT B-1, AMENDED WEST FRISCO 70, FILING NO. 2

ACCORDING TO THE PLAT RECORDED APRIL 16, 1974 AT REC. NO. 140796
LOCATED IN THE NE 1/4 OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 78 WEST OF THE 6TH P.M.
TOWN OF FRISCO, SUMMIT COUNTY, COLORADO
SHEET 4 OF 5

C.U.L.C.E. = COMMERICAL UNIT LIMITED COMMON ELEMENT
H.U.L.C.E. – HOUSING UNIT LIMITED COMMON ELEMENT



THIRD LEVEL

NOTE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR 38855

Drawn EH/JK	Dwg SHEET 4	Project 14089_22
Checked JJK	Date 06/18/2026	Sheet 4 of 5

RANGE WEST INC.
ENGINEERS & SURVEYORS
P.O. Box 589
Silverthorne, CO 80498 970-468-6281

MAP FOR 101 W. MAIN SMALL PLANNED COMMUNITY

LOT B–1, AMENDED WEST FRISCO 70, FILING NO. 2

ACCORDING TO THE PLAT RECORDED APRIL 16, 1974 AT REC. NO. 140796
LOCATED IN THE NE 1/4 OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 78 WEST OF THE 6TH P.M.
TOWN OF FRISCO, SUMMIT COUNTY, COLORADO
SHEET 5 OF 5
"PARKING MAP & UTILITY PLAN"

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR 38855

NOTE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

CURVE TABLE

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	710.00'	204.98'	204.27'	N 08°45'33" E	16°32'29"

Drawn GW/RRJ/DB/EH/JK	Dwg SHEET 5	Project 14089_22
Checked JJK	Date 06/21/2026	Sheet 5 of 5

RANGE WEST ENGINEERS & SURVEYORS INC.
P.O. Box 589
Silverthorne, CO 80498 970-468-6281

DECLARATION

FOR

101 W. MAIN SMALL PLANNED COMMUNITY

(A COMMON INTEREST COMMUNITY)

After recording, return to:
Town of Frisco
Attn: Town Manager
PO Box 4100
1 Main Street
Frisco, CO 80443

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DECLARATION
FOR
101 W. MAIN SMALL PLANNED COMMUNITY
(A COMMON INTEREST COMMUNITY)

This Declaration for 101 W. Main Small Planned Community (a Common Interest Community) (this "**Declaration**"), dated as of the ____ day of July 2026, is made by Town of Frisco, a Colorado home rule municipal corporation ("**Declarant**"). Declarant is the fee simple owner of the real property located in Town of Frisco, Summit County, Colorado, more particularly described on Exhibit A (the "**Land**") together with all rights, alleys, ways, privileges, appurtenances and advantages, to the same belonging or in any way appertaining to the Land (together with the Land, the "**Premises**").

Recitals

A. Declarant desires to subject the Premises to a common interest community regime under the Colorado Common Interest Ownership Act, specifically a small planned community, to facilitate the development and operation of an affordable housing project known as West Main Apartments (the "**Project**").

B. The Project is comprised of affordable housing and commercial space constructed in a single building on the Premises (the "**Building**"). The Building shall be subdivided into two separate small planned community primary units developed for separate ownership (each such unit a "**Unit**" and, together, the "**Units**") as more particularly described below, and certain common elements comprising residual Building and Premises elements that are not part of the Units (the "**Common Elements**") to be owned by the Association (as hereinafter defined), all which shall be governed by this Declaration.

C. The Units shall be comprised of (i) a three-story portion of the Building consisting of 52 residential rental Apartments (as hereinafter defined) for individuals and families who are qualified under low-income housing tax credit ("**LIHTC**") program rules, to be financed by, among other sources, tax credit equity from an allocation of low-income housing tax credits (the "**Housing Unit**"); and (ii) a ground-level portion of the Building consisting of approximately 664 gross square feet of ground floor space to be used for a commercial space, to be financed by, among other sources, the Town's purchase of such unit upon completion of construction pursuant to the terms of the Forward PSA (the "**Commercial Unit**").

D. Declarant desires to create on the Premises a small planned community pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes §§ 38-33.3-101 et seq., as amended from time to time ("**CCIOA**"). This Declaration is not intended to create a "condominium" or "cooperative" as such terms are defined in CCIOA. This Declaration includes no reservation of any "development rights" as such term is defined in CCIOA. Nor does the common interest community include more than 20 units, as the term "unit" is used in CCIOA, as it contains only two Units, to be transferred to and owned by Owners, as well as the Common Elements, to be owned by the Association. Accordingly, pursuant to § 38-33.3-116(2) of CCIOA, only §§ 38-33.3-105 through and including 38-33.3-107 of CCIOA applies to the Project. Declarant elects that the remainder of CCIOA shall not apply to the Project.

NOW, THEREFORE, Declarant declares that the Premises, together with all Improvements and Equipment (each as hereinafter defined) thereon or to be constructed thereon (collectively, the "**Property**"), shall be subject to the terms of this Declaration and shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements, all which shall be declared and agreed to be for the protection of the value of the Property and for the benefit of any Person (as hereinafter defined) having any right, title or interest therein, and shall run with the land and bind all Persons acquiring any interest therein, their Occupants, grantees, legal representatives, successors and assigns.

ARTICLE 1
DEFINITIONS

1.1 **Definitions**. The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

"Apartment" means an individual residential dwelling unit located within the Housing Unit in the Building. For the avoidance of any doubt, each Apartment is a part of the Housing Unit and does not itself constitute a separate "unit" as that term is used in CCIOA.

"Articles" means the articles filed with the Colorado Secretary of State for formation of the Association.

"Assessment" means, collectively, all assessments for Common Expenses as set forth in Section 3.8 and any Special Assessments, Default Assessments, and Reimbursement Assessments as such terms are defined in Article 4.

"Assessment Allocation" shall mean the percentage allocation of Expense Liability responsibility of an Owner with respect to the Unit in which such Owner has an ownership interest calculated by dividing the total number of square feet in such Unit by the total number of square feet of the Building. The Assessment Allocation is set forth on Exhibit B and described in the Assessment Allocation of each Unit Owner with respect to the Common Elements.

"Association" means 101 West Main Owners Association, a Colorado nonprofit corporation, governed by the Articles and the Bylaws which, together with this Declaration and any Rules and Regulations as may be adopted and amended by the Board of Directors, shall govern the administration of the Project. The only members of the Association shall be the Owners of the Units.

"Association's Obligations" means the Association obligations for management and maintenance of the Planned Community as set forth in Section 3.8.

"Board of Directors" or "Board" means the governing body of the Association, as provided in this Declaration and in the Articles and Bylaws of the Association.

"Budget" means an annual written itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, as prepared and approved pursuant to Section 3.3.

"Building" has the meaning given such term in Recital B.

"Bylaws" means the bylaws adopted by the Association to regulate the internal affairs of the Association, as they may be amended from time to time.

"CCIOA" has the meaning given such term in Recital D.

"CHFA" means the Colorado Housing and Finance Authority.

"Code" means the Internal Revenue Code, as modified from time to time.

"Commercial Unit" is defined in Recital C. For the avoidance of doubt, the Commercial Unit includes; all interior space located between the Vertical Boundaries of the area labeled "Commercial Unit" on the Planned Community Map; and the Commercial Limited Common Elements that are either depicted on the Planned Community Map or that serve only the area labeled "Commercial Unit" on the Planned Community Map.

"Commercial Limited Common Element" means a portion of the Common Elements allocated by this Declaration or by operation of Colo. Rev. Stat. Ann. § 38-33.3-202(1)(b) or (1)(d) for the exclusive use of the Commercial Unit.

"Commercial Unit Owner" means the fee simple owner except, when the property subjected to the Ground Lease includes the Commercial Unit, means the leasehold interest holder of the Commercial Unit.

"Common Elements" means any portion of the Building and the Premises that is not included within or otherwise forming a part of a Unit. Without limiting the foregoing, the following shall be deemed Common Elements, whether specifically described herein or otherwise depicted on the Planned Community Map: (i) the real property comprising the Premises underneath the Project from the bottom of the Unit foundations to the center of the earth; (ii) all air rights above the Building roof areas comprising the Premises; (iii) all of the roof over the Building; (iv) Utilities serving all Units or other Common Elements, until the point such Utility is separately metered or sub-metered to serve a subset of the Units; (v) any alarm or other security system(s) on the Premises operated for the benefit of all Owners; and (vi) any portion of the real property comprising the Premises outside of the Building footprint and not included within a Unit, including the portion of the private sidewalk improvements around the Building not a part of a public right of way, and any exterior drainage improvements; For avoidance of doubt, "Common Elements" includes the Housing Limited Common Elements and Commercial Limited Common Elements.

"Common Expenses" means and includes all Expense Liability relating to the Common Elements, including all the expenses of ownership, lease, administration, operation, management and Repair Work (inclusive of reserves) and other expenses declared payable by the Owners of the Units to the Association pursuant to the provisions of this Declaration, which Expense Liability shall be allocated in accordance with the Assessment Allocation and, as applicable, as estimated in and payable pursuant to the Budget from time to time.

"Costs of Enforcement" means all monetary fees, fines, late charges, interest, expenses, costs, including receiver's and appraiser's fees, and reasonable attorney fees and disbursements, incurred by the Association in connection with the collection of annual, special, and Default Assessments or in connection with the enforcement of the terms, conditions and obligations of the Planned Community Documents.

"Data Infrastructure" has the meaning given such term in Section 8.11(b)(vi).

"Declarant" has the meaning given in the Preamble to this Declaration. Declarant's rights under this Declaration shall terminate as and when Declarant has, except for its underlying fee interest in all of the property subject to the Ground Lease, transferred all its remaining right, title, and interest in and to the Project and all Units and Common Elements therein to the Owners and the Association, respectively.

"Declaration" means this Declaration and any supplements and amendments thereto, if any, approved as provided herein and recorded in the Land Records.

"Environmental Laws" shall mean any applicable present or future Federal, State or local law, Rule, ordinance, regulation, permit, license or binding determination of any applicable governmental authority relating to, imposing liability or standards concerning, or otherwise addressing the environmental, health or safety, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource, Conservation and Recovery Act of 1976, the Clean Air Act, the Federal Water Pollution Control Act, the Oil Pollution Act of 1990, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, all as amended, and as each is from time to time further amended and hereafter in effect.

"Equipment" means all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter located on or within any Unit or the Improvements constructed thereon and necessary or desirable for the proper operation and maintenance of the Unit or the Improvements constructed thereon (other than moveable equipment belonging to any management company servicing the Improvements), including but not limited to all awnings, shades, screens and blinds; asphalt, vinyl, composition and other floor, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators, and hoists; heating, plumbing and ventilating apparatus; gas, electric, and steam fixtures; chutes, ducts, and tanks; oil burners, furnaces, heaters, incinerators, and boilers; air cooling and air conditioning equipment; washroom, toilet, and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring, and equipment; tools, building supplies, lobby decorations, and window washing hoists and equipment; garage equipment, security systems, and gardening and landscaping equipment; recreational furniture and equipment; refrigerators, dishwashers, disposals, ranges, washers, dryers, and other kitchen appliances and all additions thereto and replacements thereof, but specifically excluding personal property of Apartment residents ("**Residents**") or other occupants under Residential Tenancy Agreements and excluding any personal property of the Commercial Unit.

"Expense Liability" means the liability for the payment obligations hereunder including for payment or all Assessments allocated to and payable by the Owners of the Units pursuant to this Declaration.

"First Mortgage" means a Security Interest in a Unit which has priority over all other Security Interests in such Unit.

"First Mortgagee" means the holder of a First Mortgage.

"Force Majeure" means any (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, including any federal, state, or local declaration of emergency or "shelter in place" order restricting movement or construction activity, (c) failure or shortage of electrical power, gas, water, fuel oil, or other utility or service, (d) riot, war, insurrection, threat of or terrorist action or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather conditions resulting in cessation of work on the Project for in excess of one (1) week, (g) other act of God, (h) inability to obtain a building permit or a certificate of occupancy, (i) pandemic, epidemic or other public health emergency, and any governmental orders related thereto or stoppages or delays resulting therefrom, or (j) other cause similar or dissimilar to any of the foregoing and beyond the reasonable control of the Person in question.

"Forward PSA" means that certain forward purchase and sale agreement dated on or about the date hereof between West Main Apartments LLLP, as seller, and the Town of Frisco (or its affiliate), as buyer, concerning the conveyance of the Ground Lease interest in the Commercial Unit back to the Town after completion of initial construction.

"Gross Floor Area" means, as to each Unit, but excluding any Common Elements and including any applicable Housing Limited Common Elements or Commercial Limited Common Elements appurtenant to a Unit: (i) with respect to a Unit that has not been Substantially Completed, the sum of the gross floor areas of such Unit as calculated and noted in square feet on the Initial Planned Community Map, and (ii) when a Unit has been Substantially Completed, the sum of the gross floor areas of such Unit as calculated and shown on the Post-Completion Planned Community Map.

"Ground Lease" means that certain ground lease where Declarant, as ground lessor, conveys a leasehold interest in the Housing Unit and the Commercial Unit to West Main Apartments LLLP, as ground lessee. Upon the conveyance of the ground lease interest in the Commercial Unit back to the Town after completion of initial construction, the legal description of the Ground Lease will be revised to exclude the Commercial Unit.

"Hazardous Materials" means: (a) "hazardous substances" as defined by CERCLA; (b) "hazardous waste" as defined by RCRA; (c) any hazardous, dangerous or toxic chemical, waste, pollutant, contaminant or substance ("**Pollutant**") within the meaning of any Environmental Law prohibiting, limiting or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such Pollutant; (d) petroleum crude oil or fraction thereof: any radioactive material, including any source, special nuclear or by-product material as defined in 42 USC, section 2011 et seq. and amendments thereto and reauthorizations thereof: asbestos-containing materials in any form or condition; or (e) polychlorinated biphenyls in any form or condition, as to each substance above, in amounts subject to regulation.

"Housing Limited Common Element" means a portion of the Common Elements allocated by this Declaration or by operation of Colo. Rev. Stat. Ann. § 38-33.3-202(1)(b) or (1)(d) for the exclusive use of the Housing Unit.

"Housing Unit" is defined in Recital C. For the avoidance of doubt, the Housing Unit includes the interior hallways providing access to Apartments; elevators, stairs, stairwells, and ramps (if any) providing access to the Apartments; all interior space located between the Vertical Boundaries of the area labeled "Housing Unit" on the Planned Community Map and the Housing Limited Common Elements that are either depicted on the Planned Community Map as a Housing Limited Common Element or that serve only the area labeled "Housing Unit" on the Planned Community Map. For avoidance of doubt, any portion of the Roof or other Common Elements leased or sub-leased to a telecommunications provider (a "Telecomm Lease") shall be considered part of the Housing Unit. Housing Unit Owner shall be entitled to all rental and other revenues owed to the landlord pursuant to such Telecomm Lease and shall bear all costs that must be borne by the landlord pursuant to such Telecomm Lease. Neither the Commercial Unit Owner nor the Association shall be entitled to any benefit nor bear any burden arising out of such Telecomm Lease.

"Housing Unit Owner" means the leasehold interest holder of the Housing Unit pursuant to the Ground Lease.

"Horizontal Boundary" means a plane of elevation shown on the Planned Community Map in relation to a benchmark identified on the Planned Community Map that defines either a lower or an upper boundary of a Unit, and includes all floors, structural elements, roofs and all horizontal planes that are a part of or within a Unit, except that, for any Units which share a horizontal floor as a dividing wall between such Units, the shared horizontal plane shall be deemed to be equally split as between such Units.

"HVAC" means heating, ventilation, and air conditioning systems.

"Improvements" means all improvements, appurtenances, and facilities (including all fixtures and architectural, structural, mechanical, electrical, HVAC, heating and plumbing improvements contained within them) relating to or located or to be constructed and located on the Premises now and in the future in which Units are located or to be located.

"Initial Construction of Project Improvements" shall mean substantial completion of all components of the Housing Unit and the Commercial Unit and such components of the Common Elements as are included in either the Housing Unit construction contract or the Commercial Unit construction contract.

"Initial Planned Community Map" is defined in Section 2.5.

"Land" has the meaning given such term in the preamble above.

"Land Records" means the real estate records maintained by the Clerk and Recorder of Summit County, Colorado.

"Lien Notice" has the meaning given such term in Section 4.9.

"LIHTC Tax Credit Requirements" means, with respect to the Housing Unit the requirements pursuant to Section 42 of the Code, the Colorado low-income housing tax credits under Sections 39-22-2101–39-22-2108 of the Colorado Revised Statutes, and the regulations thereunder, and under any applicable tax credit land use restriction agreements with CHFA which will be recorded against the 9% Unit or the 4%Housing Unit in the Land Records in accordance with Section 42(h)(6) of the Code or Sections 39-22-2101–39-22-2108 of the Colorado Revised Statutes as a condition of receipt of LIHTC for the Housing Unit.

"Limited Common Elements" means the Housing Limited Common Elements and the Commercial Limited Common Elements.

"Limited Partner" means (i) with respect to the Housing Unit, U.S. Bancorp Community Development Corporation, a Minnesota corporation, and USB Colorado State Investor I, LLC, a Missouri limited liability company, together, the limited partner of West Main Apartments LLLP, a Colorado limited liability limited partnership, as the initial ground lessee under the Ground Lease, and any successor and/or assign.

"Majority" shall mean 51 % of the Owner members of the Association and, with respect to voting of such Owner members, 51% of the votes allocated to such Owners.

"Mortgage" means and includes any mortgage or deed of trust at any time encumbering any of the Units, and any other security interest therein existing at any time under any other form of security instrument or arrangement used from time to time in the locality of the Property (including but not limited to any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein. For the purposes of this definition, the term "Mortgage" shall include a restatement of any Mortgage by a successor or assignee of a Mortgage, provided such restatement is on substantially the same terms and conditions as the Mortgage that is being restated ("**Restatement**").

"Mortgagee" means the beneficiary under a Mortgage, and shall include any successor to/assignee of the original Mortgagee.

"Occupant(s)" means any Person authorized by the Owners and/or the Association to use, occupy, and enjoy the Project including all Residents and all Commercial Unit staff, and guests.

"Owner(s)" means the Declarant for so long as it owns a Unit or any other Person having record title or a leasehold interest to a Unit, excluding any Person having a Security Interest in a Unit unless such person has acquired record title to the Unit pursuant to foreclosure or any proceedings or conveyance in lieu of foreclosure.

"Permitted Encumbrances" means all instruments and matters of record or in fact on the date hereof, and those instruments and matters listed in a schedule attached hereto as Exhibit C.

"Person" means an individual natural person or a corporation, partnership, limited liability company, trust or other legal entity capable of holding title to real property under Colorado law.

"Planned Community" means the subdivided portions of the Premises resulting from the recording of the Planned Community Documents in the Land Records and otherwise in accordance with CCIOA.

"Planned Community Documents" means the basic documents creating and governing the Planned Community, including this Declaration, the Articles and Bylaws of the Association, the Planned Community Map, and any procedures, Rules and Regulations, or policies relating to the Project adopted under such documents by the Association.

"Planned Community Map" means the map for the Planned Community that, taken as a whole, depicts the Planned Community in three dimensions (specifically including a site plan, Horizontal Boundaries, and Vertical Boundaries), is executed by the Declarant and is filed for record in the Land Records substantially concurrently with the recording of this Declaration in the Land Records and includes the depiction of the intended location of the Units, is incorporated herein and made a part of this Declaration by this reference. The term "Planned Community Map" shall mean the Initial Planned Community Map until recordation of the Post-Completion Planned Community Map, whereupon the term "Planned Community Map" shall mean the Post-Completion Planned Community Map.

"Plans and Specifications" means the plans and specifications for the construction of the Building and any other elements of the Project.

"Post-Completion Planned Community Map" is defined in Section 2.5.

"Premises" has the meaning given such term in the preamble above.

"Project" has the meaning given such term in Recital A.

"Property" means collectively, the Premises, the Improvements, and the Equipment.

"Reimbursement Assessments" has the meaning given such term in Section 4.5.

"Repair Work" means all maintenance, repair, and replacement work conducted at the Project, including costs of plans, specifications, supervision and other related costs.

"Resident" shall mean a Person occupying an Apartment in the Housing Unit pursuant to a Residential Tenancy Agreement.

"Residential Tenancy Agreement" shall mean the form of lease agreement between Housing Unit Owner and a Resident under the terms of which a Resident is entitled to enjoy possession of an Apartment in the Unit.

"Restoration" means the repair, restoration, or rebuilding of any or all the Improvements and/or Equipment after any damage thereto or destruction thereof, with such alterations or additions thereto as are made in accordance with the Planned Community Documents, together with any temporary repairs or improvements made to protect the Improvements and/or Equipment pending the completion of such work.

"Rules and Regulations" means any rules and regulations promulgated by the Board of Directors for the management, preservation, safety, control, and orderly operation of the Project to effectuate the intent and to enforce the obligations set forth in the Planned Community Documents, as amended and supplemented from time to time.

"Security Interest" means a consensual collateral security interest in any Unit or personal property constituting part of the Project, created by contract or conveyance and securing payment or performance of an obligation. The term includes a lien created by a Mortgage, the seller's interest under contract for deed or land sales contract if the buyer has the right to possession of the property, a lease intended as security, an assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation. If the context so requires, the holder of a Security Interest includes any insurer or guarantor of a Security Interest.

"Special Assessment" has the meaning given such term in Section 4.4.

"Substantial Completion" and "Substantially Complete" shall mean, with respect to any structure or improvement comprising the Improvements or any other portion of the Project completed pursuant to the Plans and Specifications, the issuance of a temporary or permanent certificate of occupancy or, as applicable, its equivalent, by or on behalf of the Town or other responsible building department or agency.

"Town" means the Town of Frisco, a Colorado home rule municipal corporation, located in Summit County, Colorado.

"Town Code" means the Town of Frisco, Colorado municipal code, as modified from time to time.

"Unit" and "Units" have the respective meaning given such term in Recital C.

"Utilities" means and includes private and public utility lines and related equipment or improvements of any type or nature, including wires, pipes, conduits, cables, fiber optics, and ducts for utility systems used for domestic cold and hot water, sanitary sewer, storm sewer, chilled water, condensed water, heating hot water, steam, steam condensate, natural gas, control compressed air, conditioned and non-conditioned air, ventilation and exhaust air, electricity (including switchboxes, panels, and breakers), security, fire alarm, fire suppression, emergency communications, systems control and automation, video monitoring, telephone, television, other telecommunications data transmission systems, and other mechanical, electrical, and related life safety systems.

"Vertical Boundary" means a vertical plane depicted on the Planned Community Map that defines a boundary of a Unit other than a Horizontal Boundary of that Unit and includes all vertical walls that are part of or within a Unit, except that, for any Units which share a vertical dividing wall between such Units, the shared vertical dividing walls shall be deemed to be split as between such Units, with each Owner owning an equal portion thereof allocated in accordance with the development and construction cost budget therefor as the same is reflected in the Assessment Allocation applicable to each such Unit.

"Waiver Parties" has the meaning given such term in Section 9.4(g).

ARTICLE 2
DIVISION OF PROPERTY AND IMPOSITION OF COVENANTS

2.1 **Declaration of Planned Community**. To accomplish the purposes and intentions set forth in the above Recitals (which are incorporated herein as substantive provisions), Declarant, for itself, its successors and assigns, submits the Premises and all portions of the Property hereafter acquired or constructed thereon to the small planned community ownership type under CCIOA. Further, Declarant does publish and declare that the terms, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations set forth in this Declaration shall be deemed to run with the land comprising the Premises and all portions of the Property hereafter acquired or constructed thereon and shall be a burden and a benefit to Declarant, Owners and their respective successors and assigns.

2.2 **Small Planned Community; Exemption**. This Declaration creates a "planned community" under CCIOA and not a "condominium," as those quoted terms are defined by CCIOA, as described in the recitals. The Planned Community created by this Declaration shall never contain more than 20 units and shall not be subject to any future "development rights" as that term is defined by CCIOA. Therefore, pursuant to the exemptions contained in Section 38-33.3-116(2) of CCIOA, the Project is exempt from CCIOA's provisions (except for Sections 38-33.3-105 to 107 of CCIOA). Each Person, by accepting a deed or other instrument of conveyance to and/or Mortgage against any interest in any Unit or any other Property hereunder, shall accept such interest subject in all respects to the covenants, conditions, restrictions and easements herein established and each such Person shall be deemed to agree to all the benefits and burdens set forth herein. No Owner may undertake any action that would invalidate the CCIOA exemptions set forth in this Section 2.2.

2.3 **Division into Two Units; Transfer**. The Premises are divided into a total of two Units. Each Unit consists of a small planned community interest in the space defined by the Horizontal Boundaries and the Vertical Boundaries associated with such Unit as set forth on the Planned Community Map. No additional units may be created by Declarant hereunder. The boundaries of each Unit are delineated and designated by an identifying designation or description on the Planned Community Map. The Units created hereby are subject to the Planned Community Documents and Ground Lease, as applicable, and the same shall be used, constructed, financed, operated and owned by such Owners solely in accordance with the provisions and restrictions contained herein.

2.4 **No Retained Development Rights**. Declarant retains no development rights or special declarant rights and, except for those circumstances specifically set forth herein, the description and location of the Units shall not be altered or modified without the unanimous written approval of all Owners of the Units, the Limited Partner, and all Mortgagees holding a Mortgage lien against a Unit. Specifically, none of the Units may be subdivided or combined for at least 15 years after substantial completion of both Units and without first obtaining the unanimous written approval of the Declarant (regardless of whether Declarant owns any property within the Project at the time), all Owners of the Units, all Limited Partners, and all Mortgagees holding a Mortgage lien against a Unit.

2.5 **Planned Community Map**. Prior to the conveyance of any Units or the Common Elements, the Declarant shall record an initial planned community map in the Land Records (the "**Initial Planned Community Map**"). The Initial Planned Community Map shall be based upon the Horizontal Boundaries and Vertical Boundaries of the Planned Community and the related Project elements as reflected in the Plans and Specifications and related construction documents for the core and shell of the Building and includes a notation regarding the Common Elements. Following Substantial Completion of the Improvements, there shall be recorded in the Land Records a post-completion map (the "**Post-Completion Planned Community Map**"), which shall be based upon the final confirmed as-built survey drawings for the Project. As part of the Post-Completion Planned Community Map, there shall be attached a certificate from a registered land surveyor certifying that the Post-Completion Planned Community Map substantially depicts the location and the Horizontal Boundaries and Vertical Boundaries of the Units to which it pertains and that Post-Completion Planned Community Map was prepared subsequent to Substantial Completion of the Improvements. Prior to recordation of the Post-Completion Planned Community Map, all references herein to the "Planned Community Map" shall refer to the Initial Planned Community Map. Following recordation of the Post-Completion Planned Community Map, all references herein to the "Planned Community Map" shall refer to the Post-Completion Planned Community Map.

2.6 **Required Consent for Post-Completion Planned Community Map and Conforming Amendment**. Upon Substantial Completion of the Project in accordance with the Plans and Specifications, the Post-Completion Planned Community Map shall be recorded in the Land Records and any final calculation of the Gross Floor Areas of the Units shall be set forth on such Post-Completion Planned Community Map and recorded in the Land Records. Upon completion of construction of the Improvements for the Project, the Owners, all Limited Partners, and any First Mortgagees shall review, finalize, and approve the Post-Completion Community Map and all Owners shall execute a consent and approval for the recording of the Post-Completion Planned Community Map and any supplement or amendment to this Declaration confirming the final Gross Floor Areas resulting therefrom. Each Mortgagee takes a Mortgagee lien subject in all respects to such final Post-Completion Planned Community Map and conforming amendment to which it has consented or approved.

2.7 **Amendments to Planned Community Map**. Except as otherwise provided herein with respect to the recording of the Post-Completion Planned Community Map, the Planned Community Map may be modified or amended only with the unanimous prior written consent of all the Owners, all Limited Partners, and all Mortgagees. Notwithstanding the foregoing, the Association or Declarant shall be entitled to amend and/or supplement the Planned Community Map at any time without the approval of the Owners, all Limited Partners and/or any Mortgagees, but with prior notice to the Owners, all Limited Partners and/or any Mortgagees, solely for the purposes of correcting clerical or typographical errors as necessary for completion of the Project in accordance with the Plans and Specifications. Subject to their approval rights herein, upon the written request of the Association, the Owners, all Limited Partners, and Mortgagees shall cooperate with the Association and shall timely review, finalize, execute, and deliver promptly all consents and approvals for such amendments as may be required by the Association from time to time for the purposes contemplated pursuant to this Section. Where consent or approval is required hereunder and an Owner, any Limited Partner, or any Mortgagee fails to respond (whether to approve, partially approve or object thereto) within 15 business days after receipt of a first request therefor (or after such other time period as is specified for consent or approval in a separate provision of this Declaration) then, if such Owner, Limited Partner, or Mortgagee has still failed to respond within five additional business days after receipt of a second request therefor, such party failing to so respond shall be deemed to have given the consent or approval requested or otherwise to have agreed with the request.

2.8 **Transfer of Common Elements to Association**. After recording this Declaration and the Planned Community Map, and promptly following completion of initial construction of the Project, the Declarant, shall convey a long-term leasehold interest in the Common Elements to the Association that is equal in term to the Ground Lease. Each Owner of a Unit shall have a non-exclusive right to use and enjoy the Common Elements, without hindering or encroaching upon the lawful rights of other Owners, subject to the Association's right to regulate the use thereof and to promulgate Rules and Regulations that limit the use thereof on a non-discriminatory basis in a manner consistent with the other provisions of the Planned Community Documents. Any closure or limitation of access to the Common Elements shall not, to the extent reasonably possible, substantially impede access to the Units or occur during normal business hours if the applicable Common Element is necessary for ingress or egress to a Unit.

2.9 **Parking**. Parking for residents and guests of the Housing Unit is located on the Premises, as depicted on the Planned Community Map, and is a Housing Limited Common Element. Parking for occupants and guests of the Commercial Unit is located off the Premises, pursuant to that certain 101 W. Main Housing Planned Unit Development recorded May 22, 2024 under reception no. 1330940, approved by the Town in its regulatory capacity. Neither the Association nor Housing Unit Owner have any obligation for maintenance, repair, or replacement of parking spaces for the Commercial Unit.

2.10 **Expense Liability for Common Elements**. The Assessment Allocation shall apply to the Unit Owners' Expense Liability for the Common Elements. The Assessment Allocation initially assigned to each Unit is set forth on Exhibit B, subject to reallocation in accordance with Section 2.6 of this Declaration following Substantial Completion of the Improvements. Any and all expenses of the operation, maintenance or repair of the Housing Limited Common Elements shall be allocated to and paid exclusively by the Owner of the Housing Unit, and any and all expenses of the operation of the Commercial Limited Common Elements shall be allocated to and paid exclusively by the Owner of the Commercial Unit.

2.11 **Rounding Convention**. The total of any Gross Floor Area stated as a fraction or decimal and forming the basis for the Assessment Allocation and the resulting Assessment Allocation calculation shall be rounded up or down to the nearest tenth of a percent and the total of the Assessment Allocations shall be equal to one hundred percent (100%) for purposes of this Declaration.

2.12 **Legal Descriptions**. Subsequent to the recording in the Land Records of the Declaration and the Planned Community Map, instruments of conveyance of the Units, and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to conform to the requirements of any governmental authority, practice or usage or requirement of law with respect thereto:

HOUSING UNIT, 101 W. MAIN SMALL PLANNED COMMUNITY, ACCORDING TO THE PLANNED COMMUNITY DECLARATION RECORDED ___________________, 2026 IN THE OFFICE OF THE CLERK AND RECORDER OF SUMMIT COUNTY, COLORADO, AT RECEPTION NO. ________________________, AND THE PLANNED COMMUNITY MAP FOR 101 W. MAIN SMALL PLANNED COMMUNITY RECORDED ________________, 2026 IN SUCH OFFICE AT RECEPTION NO.

_________________, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME AS PERMITTED UNDER SUCH DECLARATION.

or

COMMERCIAL UNIT, 101 W. MAIN SMALL PLANNED COMMUNITY, ACCORDING TO THE PLANNED COMMUNITY DECLARATION RECORDED __________________, 2026 IN THE OFFICE OF THE CLERK AND RECORDER OF SUMMIT COUNTY, COLORADO, AT RECEPTION NO. _______________________________, AND THE PLANNED COMMUNITY MAP FOR 101 W. MAIN SMALL PLANNED COMMUNITY RECORDED ____________________, 2026 IN SUCH OFFICE AT RECEPTION NO.

____________________, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME AS PERMITTED UNDER SUCH DECLARATION.

Such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect the Units and all the rights, obligations, benefits and burdens associated with such Unit. The Common Elements shall be transferred to the Association using similar nomenclature and convention. The reference to the Planned Community Map and this Declaration in any instrument shall be deemed to include any recorded supplements or amendments thereto.

2.13 **Separate Tax Assessments**.

(a) Upon the recording of this Declaration and the Planned Community Map in the Land Records, Declarant shall deliver a copy thereof to the tax assessor for Summit County, Colorado as required or as may be necessary to cause each of the Units to be individually assessed for tax purposes, together with the non-exclusive right of use of the Common Elements.

(b) The lien for taxes assessed against any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charge owned by an Owner shall divest or in any way affect the title to any other Unit held by any other Owner.

(c) In accordance with section 38-33.3-105 of CCIOA, the valuation of the Common Elements shall be assessed proportionately to each Unit in accordance with the Assessment Allocation and the Common Elements shall not be separately taxed or assessed.

Notwithstanding the foregoing, as the owner of the Common Elements, the Association shall be responsible for timely payment in full for all types of taxes lawfully assessed against the Common Elements, including ad valorem levies and special assessments, if any. Payment of such taxes or assessments for the Common Elements shall be a Common Expense.

(d) In the event the taxes or assessments for the Project or any part thereof for any year are not separately assessed to each Owner (as to the Units) and the Association (as to the Common Elements) but rather are assessed on the Project as a whole, then each Owner and the Association shall first file all available appeals requesting that the Assessor separately assess each Owner (as to the Units) and the Association (as to the Common Elements). If all applicable assessment appeal periods have run without the Assessor determining to separately assess each Owner (as to the Units) and the Association (as to the Common Elements), then such taxes or assessments shall be treated as a Common Expense payable as follows: (x) with respect to the portion of such tax attributable to the Units, each Owner shall pay its proportionate share in accordance with such Owner's Assessment Allocation, provided, however, that no Owner shall be obligated to pay to the extent it is statutorily exempt from property taxes; and (y) the Association shall collect such amounts from the Unit Owners (except from any Owner who is statutorily exempt from property taxes) and pay those taxes or assessments assessed against the Project in full when due and owing.

(e) The Association shall reasonably cooperate with any Owner that is exempt from payment of ad valorem taxes and seeks an exemption for payment of ad valorem taxes imposed on such Owner's Units. Consistent with C.R.S. § 29-4-227, the Housing Unit currently qualifies for exemption from all state and/or local government real property taxes in the same manner as all other affordable housing units of Frisco Community Housing Development Authority. The Owners and/or the Association shall assist one another in any reasonable effort necessary to have the Units obtain and retain an exemption or reduction from real estate or property taxes on the basis of its intended use and ownership. To the extent that any Owner is exempt from payment of such taxes, then any real estate or property taxes due with respect to the other Owners' Units shall be deemed to be payable exclusively by such other Owners who have not received an exemption from the payment of such taxes.

2.14 **Common Elements**. Other than the initial transfer of a leasehold interest in the Common Elements to the Association, no Common Element may be abandoned, partitioned, subdivided, encumbered, sold, or transferred by the Association without the prior written consent of all Owners, all Limited Partners, and any Mortgagees holding a mortgage lien against any Unit or unless all the Units are owned by one single Person, whereupon the Common Elements may be transferred to such Person at such Person's written election. Every Owner and its applicable Occupants shall have a perpetual right of use and easement of access over, across, and upon the Common Elements for the purpose of the overall Project structural support of and service to the Planned Community, including any points of access to and from public rights-of-way for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner of the Units; provided, however, that such rights and easements shall be subject to the following:

(a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in the Planned Community Documents;

(b) the right of the Association to regulate vehicular and pedestrian traffic and travel upon, in, under, and across the Project, and to assign parking spaces to Owners or otherwise regulate parking within the Project and within the Parking Spaces, provided, however, that the Association may not institute any regulation that would cause an Owner to be in violation of its zoning requirements; and

(c) the right of the Association to adopt, from time to time, all Rules and Regulations concerning the Project as the Association may determine are necessary or prudent for the management, preservation, safety, control and orderly operation of the Project for the benefit of all Owners and Occupants, and for facilitating the greatest and most convenient availability and use of the Units and the Common Elements by Owners and Occupants.

ARTICLE 3
THE ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

3.1 **Association Membership**. The Association's Articles shall be filed no later than the date the first Unit in the Project is conveyed to an Owner. Every Unit Owner shall be a member of the Association and shall remain a member so long as the Owner owns a Unit. No Owner, whether one or more persons or entities, shall have more than one membership per Unit owned, but all the Persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. If title to a Unit is held by more than one Person, such Person or Persons shall by written instrument executed (by all them, if more than one) and delivered to the Association appoint and authorize one individual or agent (and, at their option, one alternate individual in case the first is unavailable to act) to represent the Owner or Owners of the Unit. Such representative or agent shall be a natural person having substantial management responsibilities with respect to the Owner of such Unit, and such representative shall have the power to cast votes on behalf of the Owner or Owners as a member of the Association, and serve on the Board of Directors if elected, subject to the provisions of and in accordance with the procedures more fully described in the Bylaws of the Association. Notwithstanding the foregoing, if the Association has not received the written instrument from multiple Owners of a Unit required above, (a) if only one of the multiple Owners of such Unit is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Unit, and (b) if more than one of the multiple Owners are present either in person or by proxy, the Association may assume that any Owner who casts the vote allocated to that Unit is entitled to do so unless one or more of the other Owners of the Unit or their proxy promptly protests to the person presiding over the meeting; if such protest is made, the vote allocated to the Unit may only be cast by written instrument executed by all Owners or their proxies who are present at the meeting, and any purported vote lacking such unity shall be disregarded.

3.2 **Voting Rights and Meetings**. Each Unit in the Project shall have voting rights commensurate with the square footage of such Unit relative to the total square footage of the Units in the Project, as shown on Exhibit B. A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by a Majority of Unit Owners. Not less than 10 and no more than 50 calendar days in advance of any meeting, the secretary or other officer specified in the Bylaws shall cause notice of the meeting to be delivered by personal delivery, confirmed electronic mail delivery, by overnight courier or sent prepaid by United States Mail to the mailing address of each Owner on file with the Association. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to this Declaration or the Bylaws, any Budget changes, and any proposal to remove an officer or member of the Board of Directors. Unless the Bylaws provide for a higher percentage, a quorum is deemed present throughout any meeting of the Association when a Majority of the Owners are present, in person or by proxy, at the beginning of the meeting. Owners may participate in any Association meeting by means of telephone conference, video conference, or similar communications equipment by which all Owners participating in the meeting can hear each other at the same time. Such participation will constitute presence in person at the meeting and waiver of any required notice. No Owner is entitled to vote unless it has paid all assessments and other outstanding amounts owed to the Association as of the date of the vote.

3.3 **Meeting to Approve Annual Budget**. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to ratify a Budget of the projected revenues, expenditures, and reserves for the Association's next fiscal year as proposed by the Board of Directors and setting forth the budgeted Common Expenses as compared to the actual Common Expenses for the prior year. The proposed Budget as approved by the Board of Directors shall be delivered to the Owners within 30 days after its adoption by the Board, along with a notice of a meeting of the Association to be held not less than 10 or more than 50 days after mailing of the proposed Budget to the Owners. Unless at the meeting a Majority of all Owners (as opposed to a majority of those present and voting in person or by proxy) reject the proposed Budget, the Budget shall be deemed ratified. In the event the proposed Budget is rejected, the Budget last ratified by the Owners shall continue until such time as the Owners ratify a subsequent Budget proposed by the Board of Directors as provided above. Failure of the Owners to ratify a Budget shall not affect the validity or enforceability of any Assessment made by the Association with reference to such Budget.

3.4 **Owners' and Association's Addresses and Method for Notices**. The Owners of each Unit shall deliver to the Association the mailing address and electronic notice addresses to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Unit shall furnish such notice addresses to the secretary of the Association within 10 days after transfer of title to the Unit to such Owner or Owners or, in the event of a change of address, within 10 days after the change. If no address is registered with the Association, then the address of the Unit shall be deemed their registered address until another registered address is furnished as required under this section. If the address of the Unit is the registered address of the Owner(s), then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Association. All notices and demands intended to be served upon the Board of Directors shall be sent to the registered agent for the Association on file with the Colorado Secretary of State or such other address specified by the Association by notice to all Owners. Notices given in accordance with this section may be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective upon the next delivery day following deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three days after deposit in the U.S. mail, or by electronic mail with confirmed read receipt. The fact that an Owner has authorized the sending of notices by electronic mail will not invalidate any notice given to that Owner in any other manner permitted by this section. Notices to Mortgagees shall be delivered to Mortgagees in accordance with Section 11.2.

3.5 **Transfer Information**. Each Person acquiring a Unit, whether from the Declarant or from a previous Owner, shall notify the Association in writing within 10 days after acquiring such Unit. The notice shall specify the purchaser's name, addresses for notices in accordance with Section 3.4 and telephone number, the Unit purchased and the date of purchase, the name of the former Owner from whom the purchaser acquired the Unit, and the name of every Mortgagee of the Unit. The Purchaser shall also provide a true and correct copy of the recorded instrument conveying the Unit or such other evidence of the conveyance as is reasonably acceptable to the Association. In addition, the Association may request such other information as the Association determines is necessary or desirable to maintain accurate records concerning the ownership of all Units.

3.6 **Association Meeting; Election of Directors**. Not later than 30 days after the recording of this Declaration, the Owners shall meet to adopt the Bylaws and each Owner shall appoint one person to the Board of Directors in accordance with such Bylaws. The Board of Directors shall elect the officers of the Association. The members of the Board of Directors and the officers of the Association shall take office upon election.

3.7 **Association Management Duties**. Except for the initial construction of the Commercial Unit which will be completed by the Housing Unit Owner, no Owner shall be responsible for the cost of completion of Improvements for any other Owner. Following completion of construction of the Project, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements, and shall keep the same in good, clean, and sanitary condition, order, and repair. The expenses, costs and fees of such management, control, operation, maintenance, repair, replacement and improvement by the Association of the Common Elements shall be part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees to the extent such expenses have been approved by the Owners as part of the Budget. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of the Common Elements that must be maintained, repaired, or replaced on a periodic basis in such amount as may be adopted in the Budget. The Association shall adopt and amend a Budget for revenues, expenditures, and reserves which will be the basis for collection of Assessments for Common Expenses from Owners. The Association shall keep financial records sufficiently detailed to enable the Association and all Owners to comply with all requirements relating to the use and operation of the Project, including all requirements of CHFA and the Code requirements applicable to the Owners. All financial and other records of the Association shall be made reasonably available for examination by any Owner and such Owner's authorized agents, all Limited Partners, and Mortgagees. The Association may hire a qualified management company for the purpose of managing and overseeing the operation of the Project in accordance with the requirements of the Planned Community Documents following completion of Construction of the Improvements (including conducting accounting and related functions for the payment of Common Expenses), so long as the cost of such management services is included in the Budget to be approved by the Owners in accordance with Section 3.3.

3.8 **Association Powers**. The Association shall hold a long-term leasehold over the Common Elements and administer and manage the Common Elements, and personal property located within the Common Elements in accordance with this Declaration, the Association's Articles, Bylaws, and duly adopted rules, regulations, and resolutions of the Association. The Association shall have, subject to the limitations contained in the Planned Community Documents, the powers necessary for the administration of the affairs of the Association and the upkeep of the Common Elements, which shall include, but not be limited to, the power to:

(a) adopt Bylaws and Rules and Regulations and amendments thereto, as such amendments shall be approved by a Majority vote of the Owners and all Limited Partners; provided, however, any amendments to the Bylaws and/or Rules and Regulations that seek to modify, change, re-define, or revise, in any respect, the Assessment Allocation shall require unanimous written consent of all Owners;

(b) adopt and amend Budgets for revenues, expenditures and reserves approved in accordance with Section 4.1;

(c) collect Assessments for Common Expenses from Owner;

(d) hire and discharge employees, agents, attorneys, accountants, and independent contractors in accordance with the Budget approved by the Owners in accordance with Section 4.1;

(e) institute, defend, or intervene in litigation (including seeking injunctive relief for violation of the Planned Community Documents) or administrative proceedings in the Association's name, on behalf of the Association;

(f) make contracts and incur liabilities relating to its duties herein;

(g) regulate the use, maintenance, repair, replacement and modification of the Common Elements;

(h) grant subleases and licenses through or over the Common Elements which are necessary to operate the Project in the normal course of business;

(i) solely with the prior written consent of all the Owners and all Limited Partners, impose and receive payments, fees or charges for the use, rental or operation of the Common Elements and for services provided to Owners;

(j) impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs incurred in collecting Assessments and in other actions to enforce the rights or powers of the Association in accordance with the Planned Community Documents;

(k) provide for the indemnification of the Association's officers and Board of Directors (and their predecessors in such positions) to the extent of available insurance proceeds;

(l) exercise any other applicable powers conferred by the Planned Community Documents, subject to the requirements set forth in this Declaration;

(m) enforce the obligations imposed on Owners hereunder regarding, among other things, the use, reconstruction, repair and maintenance of their Units including the right to enter the Unit of an Owner that is in default of its obligations hereunder if such default is not cured by such Owner within 30 days after notice by the Association to such Owner of the default; and

(n) exercise any other powers necessary and proper for the governance and operation of the Association in accordance with the Planned Community Documents.

In exercising the power to regulate the use, maintenance, repair, replacement and modification of the Common Elements, the Association shall implement the development, construction, use and operation requirements set forth herein.

3.9 **Actions by Board of Directors**. Except as specifically otherwise provided in the Planned Community Documents, the Board of Directors may act in all instances on behalf of the Association; provided, however, the Board of Directors may not act on behalf of the Association to amend this Declaration, the Articles, or Bylaws; to terminate the Planned Community; to subdivide a Unit or modify the number and/or location of the Units; or determine the qualifications, powers, and duties, or terms of office of members of the Board of Directors; and all such actions must be taken only with a unanimous vote of the Owners as the Association members in accordance with the requirements of this Declaration and the Bylaws and approved by the First Mortgagees and all Limited Partners.

3.10 **Board of Directors Meetings**. All meetings of the Board of Directors will be open to all Owners.

ARTICLE 4
ASSESSMENTS

4.1 **Assessments Generally; Budget**. Assessments shall be due in advance on the first day of each month or such other period as may be determined from time to time by the Association. Assessments shall be based upon the Association's estimates for Common Expenses, as the same shall be included in the Budget, with an adjustment after the end of each calendar year if necessary. Each Owner shall be liable for Assessments during the period of its ownership of any Unit and no Owner may be exempt from liability for payment of any Assessments or its Expense Liability by virtue of such Owner's waiver of use or enjoyment or abandonment of any portion of its interest in the Common Elements. The Board of Directors shall cause to be prepared, at least 45 days prior to the commencement of each calendar year beginning in the calendar year following Substantial Completion of the Improvements, a Budget for such ensuing calendar year. The Budget shall show, among other things, the categories of expenses, the amount of each Common Expense, any capital expenditures, any expected income of the Association for the coming calendar year, any expected surplus or deficit from the prior year, and any existing surplus held by the Association. The Budget may include an amount for contingencies and amounts deemed necessary or desirable to create, replenish, or add to Association funds and reserves for capital expenditures and such other Association expenditures permitted hereunder. The Board shall cause a copy of the Budget to be delivered to each Owner and all Limited Partners and voted on as provided in Section 3.3. If the Budget or any portion thereof is rejected, the applicable portions of the Budget for the prior calendar year shall be used until the proposed Budget or any portion thereof is approved by the relevant Owners. To the extent expenses are due to the actions or inactions of a particular Unit Owner, that Unit Owner shall be solely responsible for such increase in expenses as further set forth in Section 4.5.

4.2 **Common Element Assessments**. Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Board shall from time to time determine to be paid by all Owners as set forth in the Budget. Estimated Common Expenses shall include the cost of routine maintenance and operation of the Common Elements, including, but not limited to, that portion of real property taxes, if any, attributable to the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping, care of grounds within the Common Elements and areas within the public rights of way (including for this purpose public access easements) that are required by the Town to be maintained in connection with the Project, routine repairs, renovations and upkeep and wages, water, sewer service and common utility charges, snow and trash removal, recycling charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous Assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be credited to the Owners in proportion to their Assessment Allocation. The Housing Unit Owner shall be responsible for all costs associated with the Housing Limited Common Elements. The Commercial Unit Owner shall be responsible for all costs associated with the Commercial Limited Common Elements.

4.3 **Apportionment of Increased Assessments**. Notwithstanding the foregoing:

(a) any increase in the cost of insurance based upon risk shall be assessed to the Unit Owner creating the extra risk in proportion to its contribution to the extra risk; and

(b) any Common Expense or Expense Liability caused by the action or inaction of any Occupant(s) shall be assessed against such Owner(s) of the Unit(s) occupied by such Occupant(s).

All such allocations of Assessments to Owners on a basis other than the Assessment Allocation shall be made in the reasonable discretion of the Board of Directors. A presumption shall exist that the Expense Liability relating to the Common Expenses will be allocated among all Units in proportion to Assessment Allocation, except to the extent the Board of Directors determines that specific costs and expenses should be allocated differently on the basis of clearly articulated objective factors. Separate Assessments shall be made to individual Units relating to utilities or work that benefits such Unit but not all Units.

4.4 **Special Assessments**. The Association shall have the right from time to time upon 30 days' written notice to the Owners and all Limited Partners to levy a special assessment ("**Special Assessment**") against the Owners according to each Owner's applicable Assessment

Allocation for the cost of any reconstruction, repair, or replacement of any Common Element not included in the Budget.

4.5 **Reimbursement Assessments**. After expiration of any required notice and cure periods set forth in this Declaration, the Association shall have the right to levy assessments against an Owner which is in default of any of its obligations under this Declaration in the amounts provided for herein ("**Reimbursement Assessments**"). A Reimbursement Assessment shall be due and payable immediately upon written notice of such Reimbursement Assessment to the defaulting Owner and may be enforced by the Association in the same manner as other Assessment liens at any time thereafter.

4.6 **Failure to Levy Assessment**. The failure to levy any Assessment or deliver a statement for any period shall not be deemed a waiver, modification, or a release of any Owner from its obligation to pay.

4.7 **Assessment Delinquency; Remedies**. To the extent any Owner fails to pay any Assessment within 15 days of the date due, the Association shall be entitled to pursue any remedy available at law or in equity, including:

(a) Charge a late fee equal to 5% of each such delinquent amount, and interest shall accrue on all amounts owing from the due date at the lesser of the maximum rate of interest per annum permitted under the law or 21%, until paid. The foregoing charges, together with all actual costs of collection (including reasonable attorney fees, foreclosure costs, and costs in connection with the filing of any lien), shall be added to and become part of any amounts owing and the Association shall be entitled to collect such amounts without commencing any legal proceeding.

(b) Upon thirty (30) days written notice and demand upon such Owner, record a lien against the Owner's Unit(s) as to all amounts owing to the Association, such lien having the highest priority permitted under the law; provided, however, that said lien shall be subordinate to any First Mortgage to the extent such First Mortgage was recorded prior to the date on which the Assessment became delinquent. To evidence such lien, the Association shall take such actions required by applicable law, which may include the preparation of a written notice of lien setting forth a description of the delinquent charges, unpaid amount, name of the Owner, and a description of the encumbered Unit, and record the required notice of lien with the Clerk and Recorder. Liens filed by the Association may be enforced by judicial foreclosure proceedings or as otherwise provided under Colorado law. The Association and any Owner shall have the power to bid on and acquire the encumbered Unit at foreclosure or other legal sale. A recorded lien may be released by recording a Release of Lien signed by an officer of the Association on behalf of the Association. Notwithstanding the foregoing, the right of the Association to lien a Unit and foreclose such lien shall be limited by any applicable laws restricting encumbrance and/or the foreclosure of publicly owned property, if applicable.

4.8 **Covenant of Obligation for Assessments**. Declarant, by creating the Units pursuant to this Declaration, and each other Owner, by accepting a deed or other instrument of conveyance of a Unit (whether it shall be so expressed in such deed or other instrument of conveyance), are deemed to covenant and agree, and do so covenant and agree to pay to the

Association (a) the annual Assessments, (b) any Special Assessments, (c) Reimbursement Assessments, and (d) any Default Assessments assessed against such Owner's Unit. No Owner may escape liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or by abandoning or leasing such Owner's Unit. Assessments shall not include the costs of developing or constructing the Improvements and such costs shall be incurred solely by the Owners in connection with their respective ownership interest in the Units owned in whole or as tenants in common therein.

4.9 **Lien for Assessments; Default Assessment**. The Assessments arising under the provisions of this Declaration shall be burdens running with, and a perpetual lien in favor of the Association upon, the Units to which such Assessments apply. The recording of this Declaration in the Land Records constitutes record notice and perfection of the lien and no further recording of any claim of lien for Assessments is required. To provide further evidence of such lien upon a specific Unit, however, the Association may prepare a written lien notice (a "**Lien Notice**") setting forth the description of the Unit encumbered by the lien, the amount of Assessments on the Unit that are unpaid as of the date of such Lien Notice, the date such amount was due and payable and the date from which interest accrues, a list of the costs and expenses (including reasonable attorneys' fees) incurred in attempting to collect the unpaid amount as of the date of recording of the Lien Notice, the name of the Owner or Owners of the Unit, and any other information the Association may deem proper evidencing the default and/or nonpayment of Assessments due from any Owner (a "**Default Assessment**"). Any Lien Notice must have the prior written approval of the Board of Directors and shall be signed by a member of the Board of Directors or an attorney for the Association and shall be recorded in the Land Records. A Lien Notice shall not constitute a condition precedent to or delay the attachment or the enforcement of the lien. The lien will be junior and subordinate to: (A) the liens of all taxes, bonds, assessments and other levies which by law are superior; (B) the lien of any first mortgage made in good faith for value, including the First Mortgage; and (C) any mortgage, lien, or other charge against the property recorded prior to the recording of the Lien Notice. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of Colorado. The Association may bid for a property at any foreclosure sale and acquire, hold, lease, mortgage, and convey such property.

4.10 **Judgment for Nonpayment of Assessments**. Assessments are the personal financial obligation of the Owner. An action by the Association (or a counterclaim or cross-claim for such relief in any action) against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without either foreclosing or waiving the Association's lien for the Assessments, or may be combined with an action to foreclose the Association's lien. Any money judgment may be enforced by garnishing the income from the operation of the Unit or seeking the appointment of a receiver to operate the Unit and apply the income therefrom to the payment of any money judgment and for all outstanding unpaid Assessments.

4.11 **Purchaser's Liability for Assessments**. The purchaser of a Unit shall take subject to the Association's lien securing any unpaid Assessments or installments thereof, and shall be personally liable for all Assessments that are made or that become payable after such purchaser became the Owner of the Unit, including subsequent installments of Assessments previously made. For Assessment purposes, the date a purchaser became the Owner shall be determined as follows:

(a) in the event of a conveyance or transfer by foreclosure, the date a purchaser became the Owner shall be the day following the date on which all applicable redemption periods expired; and (b) in the event of a conveyance or transfer by deed, the purchaser shall be deemed to have become the Owner upon the execution and delivery of the deed or other instrument conveying or transferring title to the Unit, irrespective of the date the deed or other instrument is recorded and thereafter the transferring Owner shall have no liability for subsequent Assessments.

4.12 **Waiver of Homestead Exemption; Priority of Association's Lien for Assessments**.

(a) By accepting a deed or other instrument of transfer of a Unit, each Owner irrevocably waives any homestead or similar exemption provided for under any present or future Colorado law. The Association's perpetual lien on each Unit for Assessments shall be superior to all other liens and encumbrances except the following:

(i) Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

(ii) The lien of any Mortgage that was recorded before the date on which the Assessment or any other charge under this Declaration sought to be enforced became delinquent.

(b) Any Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any liens for Assessments, but shall be subject to Assessments from and after the date the First Mortgagee acquires a Unit. The applicable Unit Owner shall remain liable for any assessments prior to the date the First Mortgagee acquires title to a Unit. Any assessments and charges against the Unit which accrue prior to such sale or transfer shall also remain the obligation of the defaulting Owner of the Unit.

4.13 **Statement of Status of Assessments**. Within 14 calendar days after receiving a written request, delivered personally, by certified mail or by overnight delivery to the Association by any Owner or Owner's designee, any Limited Partner, or by the holder of any Security Interest, the Association shall furnish to the requesting party or its designee a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. Any such statement shall be binding on the Association and every Owner, except that an erroneous statement shall not be binding as between the Association and the Person who was the Owner of the affected Unit as of the date of the statement. If no statement is furnished by the Association in accordance with the foregoing requirement, the Association shall have no right to enforce a lien upon the Unit for unpaid Assessments that were due as of the date of the request.

4.14 **Other Liens**. Except for mechanics' liens (to the extent not effectively prohibited by this Declaration) and other liens that attached to the Land before the recording of this Declaration or that otherwise have priority over this Declaration by operation of law, no liens shall be obtainable against the Common Elements except a Security Interest in the Common Elements granted by the Association in accordance with the requirements of this Declaration. No Owner shall have either power or authority to grant or otherwise create any lien affecting any other Owner's Unit.

ARTICLE 5
CONSTRUCTION AND MAINTENANCE RESPONSIBILITY

5.1 **Responsibility of the Owners to Construct, Own and Maintain**.

(a) The Housing Unit Owner is responsible for initial construction (or causing the initial construction) of the Improvements, including each Unit and the Common Elements.

(b) The Housing Unit Owner shall cause the Improvements to include, at a minimum, the two Units, as shown described in the Plans and Specifications.

(c) Following the completion of construction of the Improvements, each Owner shall maintain and keep in good repair its Unit (which includes any fixtures, equipment, and utilities installed and included therein, commencing at a point where any fixtures, equipment and utilities enter the Unit) and in a clean, safe, and attractive condition consistent with the intended use of the Project. Each Owner shall be responsible for all Repair Work as to its Unit, including any Repair Work related to: (i) any portion of the Improvements located completely within its Unit boundaries, which includes all interior floors, ceilings, and wall covering(s); (ii) all areas within the Unit that are subject to easements benefiting persons other than the Owner as described herein; (iii) any walls, hallways, stairs and other elements located solely within, and used only with respect to, its Unit; and (iv) its share of the costs of repairing damage to any portion of the Improvements which lie outside the boundaries of the Unit but which the Association has determined in its reasonable discretion was caused in whole or in part by such Unit Owner.

(d) No Owner shall undertake or allow any action or work that will impair the structural soundness of the Improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Improvement(s), or impair any easement or hereditament.

(e) Each Owner shall be responsible for routine maintenance and care of any balcony, exterior façade, and any other elements appurtenant to the Owner's Unit (including walls, floors, ceilings, windows and doors, as applicable), and for keeping the same in a good, clean, sanitary and attractive condition, including but not limited to replacing or repairing any exterior glass that may be broken or defaced.

5.2 **Owner's Negligence**. If the need for maintenance, repair, or replacement of any other Owner's Unit is caused through or by the negligent or willful act or omission of an Owner or Occupant, then any expense incurred by the Association or any other Owner for such maintenance, repair, or replacement shall be a personal obligation of such Owner who bears the responsibility therefor. If such responsible Owner fails to repay such expense within seven days after notice to such responsible Owner by the Association of the amount owed, then the failure to repay shall be a default by such responsible Owner, and such expense shall automatically become a Default Assessment determined and levied against such responsible Owner's Unit, enforceable by the Association in accordance with this Declaration.

5.3 **Responsibility of the Association**. Following completion of construction of the Improvements, the Association shall own, manage, control, repair and maintain the Common Elements in good working condition and shall keep such Common Elements in a clean, safe, and attractive condition consistent with the intended use of the Project. All costs and expenses incurred by the Association with respect to the Association's duties hereunder shall be Expense Liabilities allocated and charged as Assessments as set forth in Article 4. To the extent the Owners cannot mutually agree in a timely manner on the schedule for maintenance, repair, replacement, and improvement of the Common Elements, including access to one or more Units which is necessary to complete such work, the Association shall determine a reasonable schedule and provide each Owner with as much advance notice of the same as is practicable under the circumstances.

ARTICLE 6
MECHANICS' LIENS FOR CONSTRUCTION WORK

6.1 **Mechanics' Liens**. Once this Declaration has been recorded and the Planned Community Map filed in the Land Records, no lien for labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner or the Owner's agent, contractor, or subcontractor shall be filed against any Unit, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners, , Limited Partners, Mortgagees, the Association, and the Declarant from and against any liability or loss arising from the claim of any mechanics' lien for labor performed or for materials furnished in work on such Owner's Unit which is recorded against the Unit of another Owner or against the Common Elements or any part thereof. In the event that any contractor, subcontractor, materialman, or any other person or entity files a mechanics' or similar type of lien which burdens or encumbers any portion of the Common Elements, or any Unit in which such labor, materials, services, or products are incorporated, the Owner of the Unit in which such work was incorporated shall within 30 days of the filing of such lien of record either have such lien removed or post a bond for the benefit of the Association and/or the affected Owner in an amount sufficient to make payment in full and obtain a release of the applicable lien under the requirements of C.R.S. § 38-22-132 (or any successor provision) to remove the lien.

6.2 **Enforcement by the Association**. At its own initiative or upon the written request of any Owner (if the Board determines that action by the Association is warranted), the Association may enforce the indemnity provided by the provisions of this Article by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, including all costs and reasonable attorney fees incidental thereto, and obtain a release of such lien. If the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to indemnify within five days after the Association notifies such Owner of the total amount of the claim, then the failure to indemnify shall be a default by such Owner under the provisions of this Section, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit, and enforceable by the Association pursuant to this Declaration.

6.3 **Warranties**. This Section applies to all construction completed after initial construction of the Improvements. Owners and the Association shall require that all materials and equipment furnished in connection with the construction of the Improvements, or any alteration or addition of the Improvements undertaken in accordance with Section 7.4, will be of good quality.

The Association shall ensure or require the Owners to ensure that all obligations of the constructor under a Project construction contract are satisfied, all construction work associated with the Improvements is free from any material defects, and that such construction work will comply in all material respects with the requirements of the approved Plans and Specifications. The Owners' warranties shall be assignable to the Association for enforcement thereof with respect to any Common Elements.

ARTICLE 7
USE RESTRICTIONS

7.1 **Use of Units**. The Owners and the Association shall own, operate, and manage the Project in a manner which, among other requirements set forth in the Planned Community Documents, conforms strictly with respect to all Units, and satisfies the requirements of the Planned Community Documents. The Owner of the Housing Unit may rent or lease the Apartments for such purposes and may use or permit the use of the Apartment for home occupations and other housing-related activities that are approved by the Owners and the Housing Unit Owner's limited partners or members from time to time and that do not cause unreasonable disturbance to other Owners and that are permitted by applicable zoning codes; provided, that each lease or other rental or occupancy agreement for all or part of such Apartments must be in writing, must require each Occupant to comply with the Housing Unit financing documents, must be for an initial term of not less than six months and must be consistent with any applicable Rules and Regulations.

7.2 **Prohibition of Increases in Insurable Risks and Certain Activities.** Except with the prior written approval of the Association, nothing shall be done or kept in any Unit or in or on the Common Elements or any part thereof that would result in: (a) the cancellation of the insurance on all or any part of the Project, (b) an increase in insurance premiums for all or any part of the Project over the premiums that would be applicable in the absence of such activity, provided that this provision shall not be interpreted to prevent an Owner from any lawful use of its Unit so long as such Owner bears the cost of any additional insurance costs caused by such use, (c) an adverse effect on the right of recovery under any of such policies, or (d) reputable and independent insurance companies refusing to insure the Project in the amounts required by this Declaration. Nothing shall be done or kept in any Unit or in or on the Common Elements in violation of any statute, rule, ordinance, regulation, permit or other requirement of any governmental body having jurisdiction over the Project. No Owner or Occupant shall commit damage to or waste of the Common Elements. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or by any Occupant of such Owner's Unit. Failure to indemnify shall be a default by such Owner under this section. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is warranted), the Association may enforce the foregoing indemnity as a Default Assessment levied against such Unit.

7.3 **Activities Structural Alterations and Exterior Appearance**. Except with the prior written approval of the Association, no structural alterations to any Unit, including the construction of any additional skylight, window, door or other alteration visible from the exterior of any Unit, and no alteration to any Common Element, shall be made or caused to be made by any Owner, and no alteration or relocation of boundaries between adjoining Units shall be made by any Owner except as otherwise permitted in this Declaration. The Association may promulgate Rules and Regulations establishing procedures for the approvals required by this section; provided that, notwithstanding anything herein or in the Rules and Regulations to the contrary, (i) any changes to the exterior paint color(s) of the Building shall require unanimous consent of the Owners, and (ii) no Owner shall be responsible for any cost of completion of any alterations for any other Owner unless such Owner has provided its written consent. Such Rules and Regulations may include, but need not be limited to, requirements that the applicant submit plans and specifications showing the nature, kind, shape, height, color, materials and location of the proposed alterations in sufficient detail for the Association and Declarant to review them, and pay any processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. Any Improvements and any alterations thereto shall be made only in good and workmanlike manner using new, materials of the same quality as the original Improvements, and in accordance with all applicable building codes and other applicable laws.

7.4 **Pets; Nuisance Restrictions**. No animal pens, sheds, fences or other outbuildings or structures of any kind shall be erected by any Owner. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Project by the Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare, no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is noxious or offensive to others. No animals, birds, insects or livestock of any kind shall be raised, bred, or kept on or in the Project, except the Board of Directors may by Rule and Regulation allow Owners or Occupants of each Unit to keep not more than two domesticated dogs, cats, or other household pets which do not unreasonably interfere with the use and enjoyment of the Project by others; provided, that nothing in this Section shall be construed to require the Board of Directors to allow any Owner or Occupant to keep pets in the Project. Any Rule and Regulation permitting pets shall, among other things, establish sanctions, which may range from fines to permanent prohibitions of particular pets or all pets by particular Occupants, for any violation of such Rule and Regulation. The Owner of any Apartment in which any pet is kept shall be liable for all damages caused by such pet, but such Owner's liability shall not limit the liability of any Occupant having responsibility for such pet. In no event may any animal may be kept in any part of the Project for breeding or other commercial purposes. In addition to "service animals" (as such quoted term is used in connection with the Americans with Disabilities Act of 1990, as amended), emotional support, therapy, comfort, or companion animals are permitted in each Unit to the extent allowed by the Owner of such Unit.

7.5 **Limit on Timesharing**. No Owner shall have the right to offer or sell any interest in such Owner's Unit under a "timesharing" or "interval ownership" plan, or any similar plan of ownership. This restriction shall not be construed to prevent multiple Owners of a given Unit from agreeing among themselves on periods during which each shall have exclusive rights to occupy and use their Unit. Any short-term rental requirements or limitations shall be set forth in each Apartment lease agreement and shall comply with all applicable short-term rental laws and ordinances.

7.6 **Restriction on Signs**. No signs, billboards, poster boards, or advertising structures of any kind (including signs located upon the Common Elements or which are located within a

Unit but are visible from the Common Elements) shall be displayed, erected, or maintained for any purpose whatsoever except such signs as have been approved by the Association, such approval not to be unreasonably withheld. Notwithstanding the foregoing, the Association shall promulgate Rules and Regulations regarding signage permitted in any Apartment windows and on or within any of the Units. Nothing shall prevent directional signage, identification signs for the Apartments and for the Commercial Unit and signage advertising one or more individual Apartments within the Housing Unit for rent. Additionally, nothing herein shall prevent directional signage, identification signs for the Commercial Unit.

7.7 **Compliance with Environmental Laws; No Hazardous Materials**. The Project shall be operated in compliance with all Environmental Laws. No Owner or Occupant shall (a) cause or permit the escape, disposal, or release of any Hazardous Materials, or (b) allow the storage or use of such Hazardous Materials in any manner not sanctioned by law or by the customary standards prevailing in the multifamily apartment industry for the storage and use of such Hazardous Materials, or (c) allow any such Hazardous Materials to be brought onto the Planned Community except to use in the ordinary course of Occupant's or Owners' business, as provided below. If any Mortgagee or governmental agency, pursuant to the requirements of any Environmental Laws, reasonably requires an Owner to perform testing of a Unit to verify whether there has been any release or occurrence of Hazardous Materials thereon, then the costs thereof shall be paid solely by such Owner with respect to its Unit and by the Association with respect to the Common Elements. Notwithstanding the foregoing, the use and storage of office supplies (e.g., copier toner, white-out correction fluid, etc.), cleaning supplies, gasoline, and other Hazardous Materials in such small amounts as are typically found in normal office or residential household use, shall be permitted, so long as the presence thereof is in full compliance with all applicable Environmental Laws.

7.8 **Other Restrictions**.

(a) The Housing Unit shall be used solely for multifamily housing purposes (and for other uses customarily appurtenant to such housing purposes) through the rental of Apartment units to Residents. The Housing Unit Owner may rent or lease such Apartments in its Unit for such purposes and may use or permit the use of the Apartment for home occupations and other housing related activities approved by such Owner and its limited partners or members from time to time that do not cause unreasonable disturbance to other Owners and that are permitted by applicable zoning codes; provided, that each lease or other rental or occupancy agreement for all or part of such Apartments must be in writing, must require each Occupant to comply with the Unit's financing documents, must be for an initial term of not less than six months, and must be consistent with any applicable Rules and Regulations.

(b) The Commercial Unit shall be used solely for commercial purposes permitted under applicable zoning laws from time to time.

(c) Each Unit is subject to the obligations set forth herein and in the other Planned Community Documents, which shall be covenants running with the land and shall be binding upon the Unit Owner, including any entity which succeeds to the Unit Owner's interest in the Unit, whether by transfer, foreclosure, or an instrument in lieu of foreclosure.

(d) By accepting a deed or leasehold interest to a Unit, the Unit Owner agrees to comply with the provisions of the Federal, State, and local law prohibiting discrimination in housing on the grounds of race, color, creed, national origin, sex, marital status, or a physical or mental handicap, including, but not limited to Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Title VIII of the Civil Rights Act of 1968 (Public Law 90-284) and the Fair Housing Act (42 U.S.C. §§ 3601-3620) and the Colorado Anti-Discrimination Act (CRS §§ 24-34-101 - 24-34-901).

(e) Notwithstanding anything to the contrary in this Declaration, no Unit may be used for any of the prohibited uses set forth in Exhibit E attached hereto and made a part hereof.

ARTICLE 8
EASEMENTS

8.1 **Permitted Encumbrances**. The Property shall be subject to any easements, restrictions and reservations set forth in the Permitted Encumbrances set forth on the attached Exhibit C and in the Planned Community Documents.

8.2 **Easement for Encroachments**. If any portion of the Common Elements encroaches upon a Unit, or if any portion of a Unit encroaches upon the Common Elements or upon an adjoining Unit, or upon any other portion of the Premises, a non-exclusive, perpetual easement for the encroachment shall exist, so long as the encroachment does not materially adversely interfere with the use or occupancy of any portion of the Project or materially adversely affect access to or operation of any portion of the Project. Encroachments as referred to herein include encroachments or overhangs caused by errors in the original construction of the Building; by errors in the Planned Community Map; by settling, construction, rising, or shifting of the earth; or by changes in position caused by repair or reconstruction of all or any part of the Project.

8.3 **Association Easement for Maintenance and Repair Work**. The Association shall have a non-exclusive, perpetual easement over, through, in or on the Units, the Common Elements and all portions of the Premises for access to the extent reasonably necessary to perform general maintenance and Repair Work to any Unit or Common Element: (i) for which the Association is responsible for maintaining hereunder; or (ii) to which the Association is entitled to perform pursuant to its operation obligations hereunder; provided, however, that: (w) the exercise of such rights shall at all times be subject to the rights of Persons then lawfully in possession of or occupying the applicable Unit; (x) as reasonably as possible given the emergency or non-emergency nature of the work, the rights granted hereby will be exercised in such a manner as both to complete such maintenance or Repair Work as soon as reasonably possible and to minimize any disruption of the enjoyment, use, and operation of the Units and the Common Elements; (y) no easements are granted for the storage of materials or equipment in or upon a Unit; and (z) non-emergency repairs shall be made only upon at least 24 hours advance written notice to the affected Owner, and in emergency situations, the affected Owner shall be notified of any entry as soon as reasonably possible thereafter.

8.4 **Owners' Easement for Construction, Maintenance and Repair Work**. Each Owner shall have a non-exclusive, perpetual easement over, though, in or on the Units, the Common Elements and all portions of the Premises for access to the extent reasonably necessary to perform construction of the Building in accordance with the Plans and Specifications, construction of the Improvements to be constructed thereon by such Owner and for general maintenance and Repair Work to any Unit for which that Owner is responsible pursuant to this Declaration; provided, however, that (w) the exercise of such rights shall at all times be subject to the rights of Persons then lawfully in possession of or occupying the applicable Unit; (x) the rights granted hereby will be exercised in such a manner as both to complete such maintenance or Repair Work as soon as reasonably possible and to minimize any disruption of the enjoyment, use and operation of the Units and the Common Elements; (y) no easements are granted for storage of materials or equipment in or upon a Unit or the Common Elements; and (z) subject to Section 5.1(d) above, any maintenance or Repair Work shall be done at the sole expense of the Owner conducting such maintenance or Repair Work and upon reasonable advance written notice to the Owners whose Units is reasonably anticipated to be materially inconvenienced by such work.

8.5 **Easement for Access**. Each Owner shall have for itself and its Occupants a non-exclusive, perpetual easement for ingress and egress to and from its Unit, streets and sidewalks adjacent to the Project, over and across the halls, corridors, stairs, walks, ramps, bridges, elevators, and exterior access ways which are part of the Common Elements or which are portions of Units open to the general public, if any; provided, however, that the rights granted hereby are subject to the right of each Owner and the Association to implement, with respect thereto, Rules and Regulations as deemed advisable by such Owner or the Association and that comply with all applicable building codes and regulations and applicable permits.

8.6 **Cross-Easements for Support**. Each Owner shall have a non-exclusive, perpetual easement for horizontal, vertical, and lateral support of such Owner's Unit, including a non-exclusive easement in and to all facilities, structural members, columns, beams, foundations, load bearing walls, and other structural components located in or constituting part of the Common Elements, or another Owner's Unit for the support of such Owner's Unit. The Association shall have a non-exclusive, perpetual easement for horizontal, vertical and lateral support of the Common Elements, including a non-exclusive easement in and to all facilities, structural members, columns, beams, foundations, load bearing walls, and other structural components located in or constituting part of an Owner's Unit for the support of such Common Elements.

8.7 **Cross-Easements for Utilities**. The Association and each Owner shall have a non-exclusive, perpetual easement for the ingress, egress, access, passage, and use on, over, and across the Common Elements, and within and through each Unit of another Owner for the purpose of installing, maintaining, operating, using, operating and repairing Utilities to the benefited Owner's Unit and to the Common Elements, whether now existing or hereafter constructed in accordance with this Declaration, and for any other Utilities or other services which are or may become necessary or desirable in the future for the proper operation of such Owner's Unit or the Project generally; provided, however, that (i) no installation of any new utility shall be permitted to the extent such installation and operation is detrimental to the use or operation of any Owner's Unit; (ii) any installation, maintenance, use, operation or Repair Work shall be done at the sole expense of Owner conducting such installation, maintenance or Repair Work or the Association, as applicable, and upon reasonable advance written notice to the Owners whose Units are reasonably anticipated to be materially inconvenienced by such work; (iii) the rights granted hereby will be exercised in such a manner as both to complete any installation, maintenance, or Repair Work as soon as reasonably possible and to minimize any disruption of the enjoyment, use, and operation of the Units and the Common Elements: (iv) no easements are granted for the storage of materials or equipment in or upon a Unit; and (v) following any installation, maintenance of Utilities or Repair Work, the affected area of the Project shall be left in a clean and good condition, with all debris removed, trenches, and cuts properly filled, and any plants or other landscaping restored to its prior condition.

8.8 **Easement for Emergency Personnel**. A non-exclusive easement for ingress and egress is granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons now or hereinafter servicing the Project, to enter upon the Units, Common Elements, and all portions of the Premises, streets and driveways located in the Project and upon the Property generally, if any, in performance of their duties.

8.9 **Easements Generally**. The easements, uses, and rights created herein for an Owner and the Association shall benefit such Owner's Unit and the Common Elements, respectively, and all conveyances of and other instruments affecting title to a Unit and the Common Elements shall be deemed to grant and reserve the easements, uses, and rights provided for herein, even though no specific reference to such easements, uses, and rights appears in any such instrument. Each Owner whose Unit is subject to an easement created by this Declaration and the Association may use the easement areas in such Units and the Common Elements for any purposes permitted in this Declaration not inconsistent with such easement and shall also have the right to temporarily interrupt the use of such easements as may be necessary to perform Repair Work to Units or Common Elements, provided that the temporary interruption does not materially interfere with the use and occupancy of another Owner's Unit or the Common Elements. Each Owner whose Unit is subject to an easement and the Association with respect to Common Elements shall have the right to relocate any such easement at its expense, so long as it provides an adequate replacement easement which does not materially interfere with the use and occupancy of another Owner's Unit or the Common Elements. Each Owner irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of granting easements pursuant to this Article. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying a portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

8.10 **Additional Easements**. If at any time after the date hereof: (i) additional emergency exits are required by law or by insurance underwriting requirements generally applicable to the Project; (ii) any additional easements for access to or use of the Project and the Units located therein are reasonably necessary for the use and operation of any one or more Units; or (iii) any additional easements are necessary or desirable to effectuate the purposes of this Declaration, each Owner or the Association, as applicable, shall, within a reasonable time after written request by any other Owner or the Association, and approval thereof by the Limited Partner and First Mortgagees, grant such easement; provided that (x) no Owner or the Association granting any such easement is required to construct improvements, expend any monies, or incur other material liabilities to provide such easement (other than costs paid solely by the Owners for whose benefit such easement is to be granted); (y) such easement will not materially increase expenses, or create any material additional expenses, for any portion of the Project (unless permanently allocated to and paid by the Owner for whose benefit such easement is to be granted); and (z) the use of such easement will not unreasonably interfere with the operation, use, or enjoyment of the Common Elements or the Units. The Owners or the Association, as applicable, requesting any such easement shall pay all costs and expenses in connection with the approval and granting of any such easement, including all engineering fees, recording charges, and legal fees and expenses reasonably incurred by the Owners or the Association, as applicable, from whom such easement grant is sought. If new easements are created, this Declaration and/or the Planned Community Map shall be amended, if necessary, by Declarants or the Association as the case may be, and such easements shall have the same force, effect and priority as if such easements were originally contained herein.

8.11 **Utilities**.

(a) Generally. For avoidance of doubt, each Utility serving the Project shall be deemed a Common Element until such Utility physically separates to either: (i) serve only one Unit within the Project, or (ii) serve a Common Element. Upon such separation, if such Utility serves only one Unit, it shall be deemed allocated to that Unit. If upon such separation, such Utility serves a Common Element, it shall be deemed a Common Element, as applicable. It is the intent of the Declarant that any Utilities which solely and directly serve one Unit shall be the financial responsibility of the applicable Unit Owner served by such Utility.

(b) Initial Installation. As of the date of this Declaration, it is anticipated that Utilities shall be installed and paid for as follows:

(i) Water. The main water line tap is located on the north side of the Building and will enter the Building from the east side of the Building to the water entry room located on the first floor of the Building and will be either separately metered or sub-metered into three separate lines, one of which serves the Housing Unit and one of which serves the Commercial Unit. The water line shall be a Common Element until the point it is separately metered or sub-metered to serve the respective Units. Each Unit shall be billed directly for such service if possible. Otherwise, the Association shall be billed by the water provider for water service, and in turn, the Association shall bill each Unit Owner for their share of the cost of water service based on their respective sub-meter.

(ii) Sanitary Sewer. The main sewer line will exit the Project on the west side of the Building. The main sewer line shall be deemed a Common Element up and until the point at which it separates within the Project to separately serve each of the Units, at which point it will be deemed allocated to the applicable Unit. Each Unit shall be billed directly for such service if possible. Otherwise, the Association shall be billed by the provider for sewer service and, in turn, the Association shall bill each Unit Owner for their share of the cost of sewer service based on their respective water sub-meter.

(iii) HVAC. An HVAC shall serve each Unit with a portion of the HVAC serving the Commercial Unit while the remainder serves the Housing Unit. The HVAC is located on the rooftop, and an easement for such location is granted.

(iv) Power. It is the intent of the Declarant that each Unit will have its own separate meter for power, and the associated power lines and meters shall be part of each respective Owner's Unit. Each Unit Owner shall be responsible for payment for its power usage directly to the applicable utility provider based on usage as determined by the applicable separate meter, and the Association shall not be responsible for payment to any power service utility provider for separately metered Units.

(v) Gas. It is the intent of the Declarant that each Unit will have its own separate meter for provision of gas, and the associated gas lines and meters shall be part of each respective Owner's Unit. Each Unit Owner shall be responsible for payment for its gas usage directly to the applicable utility provider based on usage as determined by the applicable separate meter, and the Association shall not be responsible for payment to any gas service utility provider.

(vi) Data Infrastructure. Telephone lines, high speed internet, fiber optic cable and/or high speed DSL (collectively, the "**Data Infrastructure**"), as well as the conduit and raceways to deliver the same shall be fed into the Project main telecom room. Each Unit Owner shall be responsible for connecting to the telecom room via the conduit provided by the Project. Payment for each unit's Data Infrastructure lines and usage directly to the applicable utility provider based on usage as determined by the applicable utility provider, and the Association shall not be responsible for payment of any Data Infrastructure service to any utility provider.

ARTICLE 9
INSURANCE AND INDEMNIFICATION

9.1 **Insurance Required During Construction, Restoration, or Repair Work**.

(a) Insurance Required of the Association during Initial Construction of Project Improvements. During Initial Construction of Project Improvements, the Association shall maintain or cause to be maintained the following insurance coverage with respect to the Project, the premiums for which shall be a Common Expense:

(i) Builder's Risk Insurance. A policy of builder's risk insurance in such amounts as may be required by an applicable First Mortgagee and each Unit Owner's Limited Partner and, in any event, for the full replacement cost including flood and earthquake to insure the risks associated with constructing or reconstructing such improvements following a casualty event. Each such policy shall name the Owners and all Limited Partners as additional named insured parties and each First Mortgagee shall also be named as a lender loss payee and mortgagee. This policy shall cover all components of each Unit (core and shell as well as interior), and such components of the Common Elements as are included in each Unit's construction contract. Nothing herein shall limit an Owner's obligations as set forth in 10.1(b). The Association waives any rights of subrogation against the Owners and all Limited Partners and shall cause their policy to include a clause recognizing and causing the carrier to abide by such waiver.

The coverage must be an "all-in" policy, i.e., as to the Units, the Association's insurance policy must cover all the following types of property contained within a Unit, regardless of ownership and inclusive of improvements and betterments made by the current owner and its predecessors up through the date of the loss: (A) fixtures, improvements and alterations that are part of the building or structure; and (B) appliances, specifically those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

Upon substantial completion of each Unit's construction contract, the Association's builder's risk policy shall be replaced by a property insurance policy consistent with the requirements in Section 9.2(a)(i).

(b) Insurance Required of Each Owner during Initial Construction of Project Improvements. During Initial Construction of Project Improvements, in addition to such additional insurance coverages with respect to such Owner's Unit and operations as such Owner deems necessary or appropriate and as required in such Owner's operating documents and loan documents, the premiums for which shall be paid for by such Owner, each Owner shall maintain or cause to be maintained:

(i) Liability Insurance. A policy of commercial general liability insurance covering bodily injury and property damage, including contractual liability, personal injury, advertising injury and products/completed operations coverage, written on an "occurrence form," insuring against any liability in annual aggregate amounts and umbrella liability coverage amounts per the requirements in section 9.1(c)(iii). The Owners, Limited Partners, First Mortgagee of the applicable Unit, and any other persons an Owner wishes to name shall be named as additional insureds on such policies as their respective interests may appear with such status applying on a primary and non-contributory basis for the full limits and for all coverage parts of the Association's liability insurance (whether commercial general liability or excess or umbrella liability). The foregoing provisions represent the minimum coverage required, regardless of any additional insurance obligations an Owner may have under any agreements with its Mortgagee with respect to liability insurance. The Association waives any rights of subrogation against the Owners and each Unit Owner's Limited Partners and shall cause their policy to include a clause recognizing and causing its liability carriers to abide by such waiver.

This policy shall be in place during construction of all components of each Unit, and such components of the Common Elements as are included in each Unit's construction contract.

Upon substantial completion of the Project's construction contract, each Unit Owner shall be required to obtain and maintain (either directly or by requiring its tenant or subtenant(s) to obtain and maintain) commercial general liability insurance for risks associated with the ongoing operation of the Unit.

(c) Insurance Requirements to Cover Restoration or Repair Work Performed by Association.

(i) In connection with any Restoration or Repair Work performed by the Association, if not already covered by insurance policies then maintained by the Association, the Association shall also obtain and maintain "All Risk" builder's risk on a completed value basis, including earthquake, flood, windstorm and hail, ordinance and law, off premises power failure, soft costs and mechanical/electrical breakdown property insurance coverage (with commercially reasonable sublimits, as applicable) in an amount equal to the cost of the contract for any work performed by the Association on the Property. Alternatively, the Association may cause its contractors to maintain equivalent insurance, naming the Association, First Mortgagees (if available) and all Owners and Limited Partners as additional named insureds. Such insurance:

(A) shall contain an endorsement stating that "permission is granted to complete and occupy"; and

(B) if any offsite storage location listed with such insurer is used, shall cover, for full insurable value, all materials and equipment which have been delivered to and are stored at any such offsite storage location and which are intended for use with respect to the Common Elements for which the Association has Restoration or Repair Work obligations hereunder.

(ii) The cost of any insurance coverage obtained by the Association pursuant to this Section 9.1(c) shall be a Common Expense if such work is being performed by the Association with respect to a Common Element.

(iii) The Association shall ensure that all contractors and subcontractors performing work for or on behalf of Association have:

(A) Worker's Compensation as required by Colorado statute or law and employer liability insurance in an amount not less than One Million Dollars ($1,000,000.00);

(B) Commercial general liability coverage, including contractual liability and products/completed operations coverage, written on an "occurrence form" or equivalent liability coverage, with respect to each contractor and subcontractor, insuring against any liability for injury or damage arising out of or incident to the Restoration or Repair Work in the minimum amount of One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) in the aggregate. The Board, each Owner, their respective Mortgagees, and each Unit Owner's Limited Partners and such other persons as the Association wishes to name shall be named as additional insureds on such policy as their respective interests may appear with such status applying on a primary and non-contributory basis for the full limits and for all coverage parts of the

Association's liability insurance. The policy should include an endorsement that waives any rights of subrogation against the additional insureds;

(C) Umbrella liability coverage in the amount of not less than Five Million Dollars ($5,000,000.00) per occurrence and in annual aggregate; and

(D) Automobile Liability for bodily injury and property damage covering all owned, non-owned, and hired vehicles in an amount of not less than One Million Dollars ($1,000,000.00) combined single limit.

(d) Insurance Requirements to Cover Restoration or Repair Work Performed by an Owner. In connection with any Restoration or Repair Work performed by an Owner, if not already covered by insurance policies then maintained by such Owner, such Owner shall also obtain and maintain the same coverage as is required of the Association under Section 9.1(c) when it undertakes Restoration or Repair Work, except that such Owner may cause its contractors to maintain equivalent insurance, naming the Association, First Mortgagees (if available), all Limited Partners, and all Owners as additional named insureds.

(e) During initial construction of the Improvements, the Housing Unit Owner as ground lessee pursuant to the Ground Lease, will be responsible for all insurance requirements imposed on Owners by this Section. The Town will not be responsible for compliance with the insurance requirements in this Declaration until the Housing Unit Owner conveys fee simple title to the Commercial Unit to the Town as described in the Forward PSA.

9.2 **Insurance Required to be Carried by the Association**.

(a) Insurance Requirements after Completion of Construction. As to property insurance and commercial general liability, following completion of construction of the Project's core and shell Improvements, and as to all other policies listed in this section 9.2, at all times during the term of this Declaration the Association shall maintain or cause to be maintained the following insurance coverages, the premiums for which shall be a Common Expense:

(i) Property Insurance. "Special form" covered causes of loss property insurance for the full insurable replacement value, less applicable deductibles, without reduction for depreciation, for all portions of the Project except such portions as are covered by an Owner's or Occupant's personal property policy, based on the cost calculation for initial construction of the Project using the Plans and Specifications and in amounts sufficient to prevent the Association from becoming a co-insurer under the applicable policies. Such property insurance shall include, but not be limited to, coverage for terrorism, earthquake, flood (as provided below), windstorm and hail, mechanical/electrical breakdown, and business interruption (for loss of income and for extra expense as it relates to the loss of income of the Association, in an amount deemed to be adequate in the reasonable business judgment of the Association (but not less than an amount required by any First Mortgagee) for the 12-month period of each insurance policy, and otherwise in the manner customary for businesses of similar size engaged in similar activities at similar locations. In no event shall the coverage described in this Section 9.2(a)(i) fail to meet the minimum requirements set forth in the Housing Unit Owner's operating documents. The Association waives any rights of subrogation against the Owners and each Unit Owner's Limited Partners and shall cause their policy to include a clause recognizing and causing the carrier to abide by such waiver.

The coverage must be an "all-in" policy, i.e., as to the Units, the Association's insurance policy must cover all the following types of property contained within a Unit, regardless of ownership and inclusive of improvements and betterments made by the current owner and its predecessors up through the date of the loss: (A) fixtures, improvements and alterations that are part of the building or structure; and (B) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. Nothing herein shall limit each Owner's obligation provide its own "all-in" policy as required in its operating documents and loan documents.

Each Unit Owner shall be responsible for obtaining and maintaining contents coverage, if any, that it deems necessary or appropriate given the use of the Unit, the cost of which coverage shall be paid for entirely by such Owner.

The Association's property insurance coverage on the Building may have a maximum deductible of Twenty-Five Thousand Dollars ($25,000.00), as adjusted for inflation, subject to the approval of the Limited Partner (except 5% of total insured values for earthquake and 3% of total insured values for wind and hail) unless a higher deductible applicable to the Project has been approved by the Board and each First Mortgagee.

Each of the Owners, the Limited Partner, and the Association shall be named insureds or additional named insureds on any policy described in this Section 9.2(a)(i) and each First Mortgagee shall be named as a lender loss payee and mortgagee on any policy described in this Section 9.2(a)(i).

If property is located within an area designated as "Flood prone" or a "Special Flood Hazard Area" (as defined under the regulations adopted under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973), flood insurance shall be obtained in an amount equal to the maximum limit of coverage available under the National Flood Insurance Program.

The Association has the right to lower the level of coverage under its policy from the standard outlined in this Section by written Board resolution, subject to approval of all Owners, Limited Partners and First Mortgagees.

(ii) Commercial General Liability. Commercial general liability insurance covering bodily injury and property damage, including contractual liability, personal injury, advertising injury and products/completed operations coverage, written on an "occurrence form" or equivalent liability coverage, insuring against any claims and liabilities arising out of or incident to the ownership, existence, use, or management of the Common Elements, in an amount deemed sufficient in the judgment of the Board but not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) in annual aggregate, insuring the Board, the Association, the Association's management agent, if any, and their respective employees, agents, and all persons acting as agents. The Owners, First Mortgagees, all Limited Partners and any other persons as the Association or the Owners wishes to name shall be named as additional insureds on such policy as their respective interests may appear with such status applying on a primary and non-contributory basis for the full limits and for all coverage parts of the Association's liability insurance (whether commercial general liability or excess or umbrella liability). The form, coverage and limits shall conform to and be consistent with the form, coverage and limits of insurance carried by the owners of similar projects in the Town with similar uses, Gross Floor Area and, as applicable, rent per square foot but in no case shall coverage be less broad or lower in amount than that required of each Unit Owner post-construction per such Unit Owner's partnership agreement. The Association waives any rights of subrogation against the Unit Owners and all Limited Partners and shall cause their policy to include a clause recognizing and causing its liability carriers to abide by such waiver. The foregoing provisions represent the minimum coverage required, regardless of any additional insurance obligations the Association may be required to carry under any Owner agreements with Mortgagees with respect to liability insurance.

(iii) Umbrella Liability. Umbrella liability coverage in the amount of not less than Five Million Dollars ($5,000,000.00) per occurrence and in annual aggregate (or such greater amount as may be required by any First Mortgagee), insuring against any claims and liabilities arising out of or incident to the ownership, existence, use, or management of the Common Elements, insuring the Board, the Association, the Association's management agent, if any, and their respective employees, agents, and all persons acting as agents.

(iv) Automobile Liability. Automobile Liability for bodily injury and property damage covering all owned, non-owned, and hired vehicles in an amount of not less than One Million Dollars ($1,000,000.00) combined single limit.

(v) Fraud and Crime. Crime insurance, including blanket employee dishonesty, forgery or alteration, and computer fraud and funds transfer fraud, insuring funds held by or on behalf of the Association and covering the Association, the Board, the officers of the Association, and their respective employees, contractors and agents, in the greater of the amount required by law or the amount consistent with the Board's business judgment.

(vi) Worker's Compensation. Worker's Compensation to the extent required by Colorado statute or law and employer liability insurance in an amount not less than One Million Dollars ($1,000,000.00).

(vii) D&O. A policy of Directors and Officers Insurance in the amount of One Million Dollars ($1,000,000.00) to indemnify: (a) the Association for any obligations which it incurs as a result of the indemnification of Directors and Officers of the Association as required by law or by court order; (b) Directors and Officers of the Association in instances which they may be indemnified by the Association under provisions of the Bylaws; and (c) Directors and Officers of the Association in instances which they may not otherwise be indemnified, to the extent provided by such insurance.

(viii) Terrorism. If no longer available as part of "All-Risk" policy coverage, insurance covering losses resulting from acts of terrorism if and in an amount consistent with the Board's business judgment. If obtained, such coverage shall be in the amount indicated in Section 9.2(a)(i) above and shall insure against any claims and liabilities arising out of or incident to the ownership, existence, use, or management of the Common Elements, insuring the Board, the Association, the Association's management agent, if any, and their respective employees, agents, and all persons acting as agents.

(ix) Other Insurance. Other insurance, endorsements, coverages, and limits (including, if applicable, insurance against loss resulting from mold found in any portion of the Project) as may be reasonably required by a Limited Partner, a First Mortgagee, or as the Board may determine necessary or desirable. Any additional costs to the Association associated with such additional endorsements, coverages or limits shall be a Common Expense; provided that, to the extent any additional costs to the Association associated with such additional coverage benefits solely one Owner, the Association shall assess solely that Owner. The Association may also enter into binding written agreements with a First Mortgagee obligating the Association to keep certain specified coverages or endorsements in effect or to obtain approvals of insurance adjustments on claims in excess of specified dollar amounts.

To the extent not specified above, all such insurance shall be in such amounts as the Association determines to be reasonable, subject to the obligation to obtain an appraisal in accordance with Section 9.2(b)(ii) hereof, the appraised value of which shall be the minimum value used in determining replacement value.

(b) "Agreed Amount" Endorsement; Insured's Appraisal Requirement.

(i) All policies of property insurance shall contain a co-insurance waiver or an "Agreed Amount" endorsement.

(ii) The Association shall obtain an appraisal of the full insurance replacement value of the Project, without deduction for depreciation, for the purpose of determining the amount of property insurance required to be obtained hereunder. Such an appraisal shall be obtained at the inception of the Association's first year in operation following Substantial Completion and thereafter not less than every five years (or more often, if deemed appropriate by the Association).

(c) Association's Vendors. The Association shall cause its non-construction-related vendors (e.g., property maintenance contractors) to maintain such insurance as is necessary or appropriate under the circumstances as determined by the Association in its reasonable discretion, including but not limited to Commercial General Liability, Automobile (Owned, Hired & Non-owned), Worker's Compensation & Employer's Liability. For those rendering professional services, Professional Liability should be required. The Association agrees to indemnify the Owners for any suits brought against the Owners by vendors hired by the Association.

(d) Required Provisions in Association Policies. All Association insurance policies must provide that:

(i) Each Owner is an insured person;

(ii) To the extent applicable to and available for the particular type of policy, the insurer waives its rights to subrogation under the policy against any Owner or Occupant to the extent permitted by law;

(iii) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance, and such insurance is without contribution regardless of insurance against the same risks carried by Occupants or Mortgagees, individually;

(v) All policies for the Association are to be written in the name of the Association as first named insured and, to the extent expressly required elsewhere herein, any Owners, Limited Partners, First Mortgagees (if available), or other parties added as additional insureds;

(vi) Unless otherwise agreed in writing by the Owners (with the prior consent of all Limited Partners) or the First Mortgagees, the Association's insurance must cover the Common Elements;

(vii) The Association's insurance is not required to include liability insurance for individual Owners for liability arising within a Unit; and

(viii) Any "no other insurance" clause in insurance policies shall not prohibit Owners, Occupants or Mortgagees from obtaining insurance on their individual Units.

9.3 **Insurance Required to be Carried by Owners**.

(a) Each Owner shall obtain and maintain, at its own expense, the following types and amounts of insurance from reputable carriers in force at all times:

(i) insurance to the extent required in such Owner's operating documents and loan documents;

(ii) insurance against loss or damage to such Owner's personal property and equipment (and such Owner shall, in turn, require its Occupants to do the same with respect to any of their own personal property and equipment); and

(iii) if and only if the Association has not obtained and maintained adequate coverage insuring against such risks as part of a Project-wide policy (for example, during initial construction of the Project), commercial general liability insurance, covering the Owner against bodily injury liability and property damage liability, including any liability arising out of the ownership, maintenance, repair, condition, or operation of the Unit in which such Unit's Owner has an interest, containing a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of the Owner because of the negligence or other acts of the other, in amounts not less than $1,000,000.00 per occurrence for bodily injury and property damage, and $2,000,000.00 general aggregate, where such limits of insurance may be acquired through Commercial General Liability and Umbrella liability policies of not less than $2,000,000.00 each occurrence and in the aggregate or such greater amount as shall be required by such Owner's First Mortgagee(s).

(b) All Owner insurance policies shall:

(i) provide (A) for a waiver of subrogation by the insurer as to claims against the other Owners, their employees and agents, and the Association, its employees and agents; (B) that the insurer shall not deny a claim and that such insurance cannot be unreasonably cancelled, invalidated, or suspended on account of the conduct of Owner, its officers, directors, employees or agents, or anyone acting for Owner or any subtenant or other occupant of the Premises; and (C) that any losses otherwise payable thereunder shall be payable notwithstanding any act or omission of the other Owners, the Association, or Owner which might, absent such provision, result in a forfeiture of all or a part of such insurance payment;

(ii) be primary and provide that any "other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by the other Owners or the Association, and the insurance policy shall not be brought into contribution with insurance maintained by the other Owners and the Association;

(iii) contain deductibles not to exceed Twenty-Five Thousand Dollars ($25,000.00) (except 5% of total insured values for earthquake and 3% of total insured values for wind and hail) or such lesser amount as shall be required (or such higher amount as may be permitted) by such Owner's First Mortgagee(s), the Limited Partner, and the Association; and

(iv) name the other Owners, the Association, any First Mortgagee, and all Limited Partners as an "additional insured" with respect to general liability insurance, and name each First Mortgagee as a "loss payee" and "mortgagee" with respect to all real property insurance, as appropriate and as their interests may appear.

(v) Notwithstanding anything to the contrary contained herein, each Owner shall obtain insurance as necessary to meet insurance requirements set forth in its operating documents and loan documents.

(c) It is expressly understood and agreed by each Owner that (i) if any insurance required hereunder, or any part thereof, shall expire, be withdrawn, become void by breach of any condition thereof by an Owner, or become void or in jeopardy by reason of the failure or impairment of the capital of any insurer, each such Owner shall immediately obtain new or additional insurance reasonably satisfactory to the other Owners, the Association, the First Mortgagee as to the insurance being obtained by the Owner to whom it made a loan, Mortgagees, and all Limited Partners; (ii) each Owner shall procure policies for all insurance for periods of not less than one year; and (iii) each Owner shall pay as they become due all premiums for the insurance required of such Owner by this Section. The Association shall have no liability for an Owner's failure to obtain and maintain insurance required under this Declaration.

(d) Each Owner, Mortgagee, and all Limited Partners may contact the Association directly to request copies of the insurance policies required of each Owner by this Section. The Association shall provide (or shall cause the relevant Owner to provide) each Owner, Mortgagee, and all Limited Partners with copies of all policies and renewals of policies, including copies of applicable Association policies, with five business days of receipt of a written request.

9.4 **General Insurance Matters**.

(a) Insurer Requirements. All policies of insurance required to be obtained pursuant to this Declaration shall be from companies licensed or authorized to do business in the State of Colorado and rated in the A.M. Best Key Rating Guide (or any successor publication of comparable standing) with a rating of at least A-/VIII (or the then equivalent of such rating).

(b) Change in Nomenclature. During the term of this Declaration, the Association and each Owner acknowledges that the scope of coverages, or the nomenclature by which such coverages are known, may change. In such event, unless otherwise agreed to as reflected in a written and recorded amendment to this Declaration, the Association and each Owner shall be obligated to maintain the scope of coverage contemplated as of the initial filing of this Declaration to the extent reasonably practicable, regardless of the nomenclature by which the scope of such coverages may be subsequently known from time to time.

(c) Mortgagee Endorsement. The property and liability policies of insurance required to be obtained pursuant to this Article shall include a standard form mortgagee endorsement or its equivalent in favor of the Mortgagees which shall provide for payments to the Trustee and which shall insure each Mortgagee regardless of (i) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured or an Occupant, (ii) the occupancy or use of the Project for purposes more hazardous than permitted by the terms of the policy, (iii) any foreclosure, appointment of a receiver, or other action or proceeding taken by the Mortgagee pursuant to any provision of its mortgage, or (iv) any change in title to or ownership of the Unit subject to the lien of a Mortgagee.

(d) Insurance Not Available at Commercially Reasonable Premiums. All of the policy requirements (including any required coverage or endorsements) contained in this Article 10 are required only to the extent obtainable at commercially reasonable rates and on commercially reasonable terms from any insurance company meeting the requirements set forth herein. For purposes of the foregoing, rates and terms shall be considered commercially reasonable (notwithstanding the actual amount thereof) if: (a) the Mortgagee of a Unit requires such coverage; or (b) other buildings in the Town with similar uses are then (i) generally obtaining insurance which meets the insurance requirements in question, and (ii) the premiums for such policies are not substantially lower on a comparative basis to those which the Association or an Owner, as applicable, would be required to pay to obtain such insurance. If an Owner or the Association claims that certain insurance coverage is not obtainable at commercially reasonable rates or on commercially reasonable terms pursuant to the foregoing sentence, the Owner or Association shall: (x) provide the Association and the other Owners with immediate written notice of same; and (y) obtain such coverages in lieu and in place of those required hereunder as approved by: (i) the Association, if an Owner is the party providing the notice required in clause (x), or (ii) all the Owners, if the Association is the party providing such notice, in each case, with prior approval by the Limited Partner and each First Mortgagee.

(e) Notice of Cancellation. Before any substantial modification, non-renewal, or cancellation of a policy or any other change that would result in a violation of the requirements set forth in this Article 9, then, if and to the extent any insurer agrees to provide such notice, at least 30 days' advance written notice shall be given to all certificate holders, including the Owners, the Association, all Limited Partners, and the Mortgagees. Each Mortgagee shall be permitted to make payments to effect confirmation of a policy upon notice of cancellation due to non-payment of premiums.

(f) No Separate Competing Claims Insurance. Neither the Association nor the Owners shall carry separate insurance concurrent in form or contributing in the event of loss with that required by this Declaration to be furnished by the Association unless the Owners are included therein as additional insureds, as their interests may appear, with loss payable as provided in this Declaration. The Association shall notify the Owners, and any Owner shall notify the Association and all other Owners, if it carries any such separate insurance and shall cause the same to be delivered as required in this Declaration. In the event such competing insurance is carried unbeknownst to any party, the Association's policies shall be deemed primary.

(g) Required Waivers.

(i) All policies of property insurance shall contain:

(A) waivers by the applicable insurer of all rights of subrogation (except those arising from gross negligence or willful misconduct) against the Association and its directors and officers, each Owner and any Occupants (including persons leasing, licensing, subleasing or having the right to use space in the Project), the Mortgagees, and each of their respective agents, employees and licensees, and an agreement that each such policy shall not be invalidated if the insured waives or has waived its right of recovery against any such persons prior to a loss; and

(B) waivers of any defense based on co-insurance, other insurance, and invalidity arising from any acts of the insured.

(C) waivers by the applicable insurer of any right to claim any premium and commission against the Mortgagees.

(ii) Each Unit Owner shall cause any tenant or subtenant of space in its Unit to obtain reasonable and customary insurance that is carried by owners of similar projects located in the Town, such as commercial general liability; worker's compensation; property or casualty insurance policy insuring fixtures, machinery, and equipment and any other personal property in such tenant's or subtenant's premises containing a waiver by the applicable insurer of all rights of subrogation (except those arising from gross negligence or willful misconduct) against the Association, any Owner, any Limited Partner, any Mortgagees, any other Occupants and their employees or agents and an agreement that such policy shall not be invalidated if the insured waives or has waived its right of recovery against any such persons prior to a loss.

(iii) Insofar as may be permitted by applicable law, each Owner waives for itself, and those claiming through and under such party, any claim or right of recovery and releases the Association, the other Owners and their respective agents, employees, Limited Partners, and Mortgagees (collectively, the "**Waiver Parties**") with respect to any property damage claim which it (or those claiming through or under it) might otherwise have against any of the other Waiver Parties for loss, damage or destruction (including rental value or business interest, as the case may be), except those arising from the gross negligence or willful misconduct of the Waiver Party, to the extent such loss, damage or destruction is actually covered under, and such proceeds are received by way of a claim against, the property insurance policies maintained by or on behalf of such waiving party (or with respect to an Owner's claims relating to loss, damage or destruction to the Common Elements, by or on behalf of the Association).

(h) Dividends and Return of Premiums. The Owners shall be entitled to all dividends and return of premiums in connection with policies obtained by or on behalf of the Association hereunder in accordance with their payments with respect to the premiums therefor (for example, if a premium is paid as a Common Expense, each Owner's share of the amount of any refund shall be calculated at the Assessment Allocation at the time the premium was paid; if a premium (or a portion thereof) was paid for solely by one Owner, such Owner shall be entitled to 100% of any refund of such premium (or portion thereof)).

(i) Additional Liability Insurance Requirements.

(i) Liability coverage shall be endorsed with a ‘cross liability or separation of insured’ endorsement, if not otherwise included, providing that if a claim is brought by one insured against another insured under such policy, or by an employee of one insured against another insured under such policy, each insured shall be considered a separate insured for purposes of the insurance.

(ii) Liability policies shall be written with a contractual liability endorsement, if not otherwise included, providing coverage for bodily injury or property damage assumed under any type of written contract, except any contract under which the insured assumes liability for the sole negligence of an indemnitee.

(j) Evidence of Coverage.

(i) Association Insurance.

(A) A copy of each policy required to be maintained by the Association pursuant to this Article 9 shall be delivered to all Owners within 30 days after the filing of the Declaration, except that if any insurance carried by the Association is effected by one or more blanket policies, then with respect to such insurance, abstracted policies relating to the Property may be so delivered to Owners.

(B) No less than 10 days prior to the expiration or termination date of any policy, the Association shall deliver to each Owner a copy of the renewal or replacement insurance policy replacing such expiring policy or a certificate (in form then customarily required by institutional lenders making loans on comparable commercial properties based on age, size and quality or in other form as is reasonably satisfactory) or other evidence reasonably satisfactory to the recipient of the existence of such renewal or replacement policy, together with proof of payment of premiums and confirmation that such policy meets the requirements of this Article 9.

(C) Without limiting the generality of subclauses (A) and (B) above, at any time and from time to time, within a reasonable period after request, the Association shall provide to any Owner, Limited Partner or First Mortgagee who requests the same, a certificate of insurance evidencing all required Association policy coverages and additional insured, loss payee or mortgagee status. The Association shall deliver this evidence to each Owner, all Limited Partners, and the First Mortgagees no less frequently than annually, regardless of whether any such party expressly requests it.

(ii) Owner Insurance. Certificate(s) evidencing the existence of coverage to be maintained by an Owner hereunder shall be delivered to the Association within 30 days after such Owner commences initial construction of its Unit. Within 10 days prior to the expiration or termination of any policy, the Owner shall deliver certificates or other reasonably satisfactory evidence evidencing the existence of a renewal or replacement policy to the Association. The Association shall make such certificates available for review by the other Owners upon written request.

(k) Remedies for Failure of Association to Obtain Insurance. Without limiting any other remedies which may be available to an affected party, in the event that the Association fails to deliver to the Owners a certificate or other evidence of insurance required to be provided by the Association hereunder on or prior to the date the same is required to be delivered to such party pursuant to Section 9.3(g) hereof and does not cure such default within 10 days after notice thereof from such party, then one or more Owners shall be authorized (but not required) if the same remains uncured, to procure such coverage on behalf of the Association, in the amount stated, with all costs thereof to be reimbursed to such purchasing party or parties by the Association within 10 days after request accompanied by suitable evidence of such payment.

(l) Owner Liability. Neither the issuance of any insurance policy hereunder, nor the minimum limits specified herein with respect to an Owner's insurance coverage, shall be deemed to limit or restrict in any way any Owner's liability in connection with or arising out of its work and the indemnification obligations set forth in this Declaration. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit, and each Owner shall be responsible for obtaining such additional insurance as such Owner deems prudent, at the Owner's expense, including the value of any personalty or any improvements which are not insured by the Association; provided that no Owner or Occupant is entitled to exercise its right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of the Owners, may realize under any insurance policy maintained by the Association pursuant to this Declaration.

(m) Schedule of Insureds. The Association shall maintain a schedule of all required additional insureds for each type of insurance required hereunder and shall update such schedule periodically upon any applicable change. The Association shall provide copies of such schedule to all Owners upon any such change and at any time upon request.

(n) Blanket Policy; Options.

(i) Following written notice to the Owners, any policies required to be maintained by the Association pursuant to this Article may be maintained by or on behalf of the Association under a blanket policy or coverages; provided, however, that such insurance otherwise complies with this Article and, in the case of property insurance coverage, such blanket insurance policy shall specify the portion of the total coverage of such policy that is allocated to the Project to be insured hereunder, and any sublimits, if any, in such blanket policy applicable thereto, which amounts shall not be less than the amounts required pursuant to this Article 9. The premium for such blanket insurance shall be equitably apportioned among all the Owners covered thereby, with the basis for such apportionment being fully described to the reasonable satisfaction of each Owner upon request.

(ii) Any policies required to be maintained by an Owner pursuant to this Article hereof may be maintained by the Owner under a blanket policy or coverages; provided, however, that such insurance otherwise complies with this Article.

(o) Separate Policies Alternative. The insurance the Association is required to obtain may be procured under one or more policies. In the event that the Owners unanimously determine (with the approval of the First Mortgagees and all Limited Partners) that it is in their best collective interest to have separate policies of property insurance meeting the coverage requirements of Sections 9.1 and 9.2, i.e. issued with respect to the individual Units instead of a single policy covering all Units, then the Association shall be entitled to modify its insurance policy accordingly, thereby requiring the Owners to insure all improvements within their Unit (including all carpet, millwork, doors, hardware, cabinets, lighting and plumbing fixtures and all built-in elements of the particular Unit). In such event, (1) each Owner shall deliver to the Association a certificate of insurance naming the Association as an additional insured, and (2) the Association shall deliver a revised certificate of insurance to each of the Owners, the First Mortgagees, and all Limited Partners evidencing the revised insurance coverage and revising the Common Expense category in the Budget relating to the payment of insurance premiums.

(p) Coverage and Limits on CGL and Umbrella Policies. The commercial general liability insurance and umbrella liability coverage required to be obtained by the Association as set forth above shall include as additional insureds the Owners, First Mortgagees, Limited Partners, and such other parties as the Association reasonably elects to add to such coverage.

(q) Annual Reviews of Coverage. The Association shall annually review the adequacy of the coverage afforded by the policies maintained pursuant to this Declaration, and shall issue a written report of the results of said review to the First Mortgagees, all Limited Partners, and to the Owners not less frequently than once a year. Upon request of a First Mortgagee or Limited Partner, such annual review shall be confirmed by an independent insurance consultant to the Association. For the avoidance of doubt, in the event a Unit Owner desires additional coverage based on its particular use or property under policies maintained by the Association, such Owner shall bear any increase in premium associated with such additional coverage. In no event shall the Association reduce the coverage of the policies maintained pursuant to this Declaration without the prior written consent of the First Mortgagees and all Limited Partners.

9.5 **Indemnification**. To the extent permitted by law, if permitted at all, each Owner shall indemnify and hold harmless the Association and the other Owners and their Limited Partners and Occupants from and against all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' and other professional fees, which may be imposed upon or incurred by or asserted against the Association or another Owner by reason of the following: (a) any use or non-use of, or the condition of, its Unit; (b) the operation, management and maintenance of its Unit; (c) any accident, injury or damage to any person or property occurring in, or upon, its Unit; (d) any use by it or any of its Occupants of the Common Elements, or any other use by it or its Occupants of the Property or any portion thereof; (e) any negligent or wrongful act or omission of it or any of its Occupants in, about, or with respect to, the Property or any portion thereof; and/or (f) any failure by it to comply with the terms and conditions of the Planned Community Documents. The foregoing indemnity shall expressly exclude any of the foregoing to the extent caused by the negligence or willful misconduct of any indemnified party or caused by the indemnified party's failure to comply with the terms and conditions of the Planned Community Documents.

ARTICLE 10
CASUALTY OR CONDEMNATION

10.1 **Rebuilding Required; Exceptions**. This Declaration does make mandatory reconstruction of the Planned Community following a casualty or condemnation, except as set forth in Section 10.4 (Termination of Planned Community resulting from Casualty or Condemnation). Each Owner, First Mortgagee and Limited Partner acknowledges that to the extent a Casualty or Condemnation results or could result in a loss of tax credits for an Owner, each Owner and First Mortgagee, to the extent applicable, shall use every commercially reasonable effort to reconstruct in a manner to minimize such loss of tax credits.

10.2 **Procedures for Settlement of Claims under Policies Maintained by the Association**.

(a) Notice. Each Owner agrees to notify the Association, each other Owner, and all First Mortgagees and all Limited Partners in writing of (i) any material fire or other casualty to or accident involving the Property within 24 hours of such fire, casualty or accident, whether such fire, casualty or accident is covered by insurance, and (ii) any institution of any action or proceeding relating to any condemnation, other taking or exercise of eminent domain or conveyance in lieu thereof, of all or any part of the Property (a "**Condemnation**") or notice of any pending or threatened Condemnation proceedings within 24 hours of notice of the institution of such proceedings or notice thereof.

(b) Designation of Trustee. Immediately upon receipt of notice of casualty or Condemnation or an event which may be covered under the Association's builder's risk, property, and/or liability policies, the Association shall enter into an agreement (the "**Trust Agreement**") with a trustee (the "**Trustee**") concerning the receipt and application of the proceeds of policies of builder's risk, property, and liability insurance maintained by the Association and of Condemnation awards, which agreement shall be in form and substance satisfactory to the First Mortgagees and all Limited Partners. The Trustee shall be a commercial bank, holding company, trust company or similar financial institution reasonably acceptable to and approved by the First Mortgagees and all Limited Partners, who is a member of the Federal Reserve System and whose activities are regulated and subject to examination by the Federal Deposit Insurance Corporation or other federal authorities performing a similar function. Unless otherwise agreed by each First Mortgagee and the Owners, the Trustee shall be U.S. Bank National Association or its designee. The Trust Agreement shall provide that all proceeds of insurance or Condemnation awards paid to the Trustee shall be held and applied by the Trustee in accordance with the provisions of this Declaration. All fees payable to the Trustee pursuant to the Trust Agreement shall be Common Expenses.

(c) Proof of Claim. If all or any portion of the Property is damaged or destroyed by any fire or other casualty implicating the builder's risk or property insurance policy held by the Association as primary insured, or if a claim arises which implicates the commercial general liability policy held by the Association as primary insured, then the Association shall notify the insurance company promptly and submit an appropriate claim and proof of claim not later than 30 days following the loss or damage. If the Association fails to make proof of loss within that 30-day period, then the First Mortgagee with the largest outstanding balance as of the date of the casualty may make such proof of loss within the next 30-day period (but shall have no obligation to do so); and if such First Mortgagee fails to make such proof of loss, then any other Mortgagee or Limited Partner may make such proof of loss (but shall have no obligation to do so).

(d) Settlement of Claim. Subject to the approval of the First Mortgagees for any claim in excess of $250,000.00, such approval not to be unreasonably withheld, the Association may adjust and compromise any claims under its insurance policies. The Association shall use commercially reasonable efforts to finalize the adjustment of the claim with the insurance company within 30 days of the date of the casualty.

(e) Deposit with Trustee. The Association shall deposit all proceeds received as a result of insurance or Condemnation or through any assessment made hereunder in an escrow account with the Trustee. The Trustee shall hold such proceeds in trust for the Owners and the Mortgagees, as their interests may appear, for the purpose of paying the cost of Restoration or Repair Work as provided in this Article.

(f) Conditions to Disbursement by Trustee. Insurance or Condemnation proceeds ("**Net Proceeds**"), including any insurance proceeds received by the Association pursuant to its policies, and any deposits made by the Owners shall be held by the Trustee in a federally insured (to the extent possible) interest bearing account (the "**Restoration Fund**"). The Restoration Fund shall be disbursed to the Association or to any contractor or subcontractor for Restoration of or Repair Work to the damaged Common Elements, and to the Owners, their contractors or subcontractors, for the prompt Restoration of or Repair Work to the damaged Units, provided and for so long as:

(i) The Restoration would not be illegal under any federal, state or local statute or ordinance.

(ii) No provision of this Declaration regarding Restoration and disbursement of Net Proceeds would be violated by such disbursement.

(iii) Draw requests have been certified by the applicable Owner or Association, general contractor and, where applicable, project architect (including certification from the architect of the stage of completion under each contract and subcontract).

(iv) The First Mortgagees or, if only one Unit is affected, then the First Mortgagee (and, as applicable, the Limited Partners) of such Unit, is satisfied that there are (or upon settlement will be) sufficient funds held by the Trustee in the Restoration Fund to complete Restoration.

(v) The Association or the Trustee shall have provided to the First Mortgagee(s) and all Limited Partners reasonably satisfactory evidence that the Project or the Unit(s), as the case may be, can be restored at least to the value, usefulness, condition and character that existed prior to the damage or destruction, and that the Restoration of such property can be completed prior to the maturity date of the debt secured by the Mortgage relating to the Unit(s) in question and, to the extent such Unit(s) have been financed in part with tax credit equity, in a manner that will result in the least amount of loss to that tax credits available to each Unit.

(vi) The affected First Mortgagee(s) and all Limited Partners shall have received reasonably satisfactory evidence that:

(A) The sum requested in each disbursement has been paid or is then due and payable and is a proper item of such cost.

(B) All materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested payment) in connection with the Restoration have been paid for in full.

(C) There exist no mechanics', materialmen's or other liens on the Project arising out of such Restoration, or if any such liens do exist, such liens would be discharged with the funds received from the requested disbursements.

(D) The balance of the Restoration Fund shall be sufficient to pay in full the balance of such cost of the Restoration.

(E) All licenses, permits and approvals for Restoration as required by all state and local ordinances or statutes have been obtained.

The Restoration Fund must be disbursed first for Restoration of or Repair Work on the damaged property, and the Association, Owners, and Mortgagees are not entitled to receive payment of any portion of the Restoration Fund unless there is a surplus after the property has been completely repaired or restored or the Project is terminated.

(g) Failure of Conditions to Disbursement. If all these foregoing conditions are not satisfied, then such Restoration Fund or so much thereof as shall not have been disbursed shall, upon demand by the First Mortgagee(s), be disbursed as though such Restoration Fund were surplus in accordance with the procedure set forth in this Declaration below.

(i) Notwithstanding such payment, the Owner of the damaged Unit shall bear the obligations for Restoration as provided in this Declaration above, and each Owner shall, from time to time upon demand of the Association or the Trustee, deposit its share of the cost of Restoration in excess of its share of the Net Proceeds available for disbursement, with the Trustee, subject, however, to the provisions in this Declaration below regarding an election to terminate the Project following a casualty or Condemnation event. Each Owner shall pay the costs of Restoration attributable to its Unit and shall pay its Board-determined share of costs attributable to the Common Elements. If the Owner fails to do so, the Association shall have the rights and remedies as provided in this Declaration.

(ii) The Association shall promptly commence and diligently pursue the Restoration of the Project as expeditiously as possible in a good and workmanlike manner and in accordance with the final plans and specifications for construction of the Building (and final plans and specifications for improvements and alterations to Units) and in accordance with the Map, regardless of whether Net Proceeds are made available for Restoration, and regardless of whether the Net Proceeds which are available are sufficient to complete such Restoration. Subject to the provisions below regarding (i) an election to terminate this Declaration following a casualty or Condemnation event, and (ii) modifications due to legal requirements, the Project shall be restored to substantially the same usable area, and to substantially the same value, condition and character as existed prior to such damage.

(h) Deductibles. Unless otherwise agreed in writing by the Owners and First Mortgagees and all Limited Partners in a particular instance, any required deductible on an Association policy is a repair or maintenance expense to be paid by the Owner(s) who would be responsible for the loss in the absence of insurance. If the loss affects more than one Unit or any combination of one or more Units or the Common Elements, the Board may equitably apportion the cost of the deductible among the parties suffering loss in proportion to the total cost of repair. However, if the insurance policy provides that the deductible applies to each Unit separately or to each occurrence, each Owner is responsible for paying the deductible pertaining to their Unit, if any. In addition, if the need for such Restoration or Repair Work is caused by the misconduct (whether negligent or intentional) of one Owner, the Association shall not apportion the cost of the deductible to the other Owner(s) and shall in its reasonable discretion apportion it exclusively to the responsible Owner. If any Owner(s) fail to pay the deductible when required under this subsection, then the Association may pay the deductible and assess the cost to such Owner(s) pursuant to Article 4 of this Declaration.

(i) Allocation of Proceeds: Multiple Owners. In the event of casualty or Condemnation affecting any combination of the Units or the Common Elements, then the net proceeds from such casualty or Condemnation and the costs of Restoration shall be allocated by the Board among the affected Unit(s) and Common Elements, in accordance with the relative damage sustained with respect to each such portion of the Project.

(j) Shortfalls.

(i) As to Common Elements, if the amount of insurance proceeds or Condemnation award is insufficient to pay the estimated or actual costs of Restoration or Repair Work, the Association: (i) shall first use any reserves that may have accrued with respect to that Common Element; and (ii) to the extent such reserves are also insufficient, may levy, assess and collect one or more Special Assessments from all Owners in accordance with their Assessment Allocation, unless the need for such Restoration or Repair Work is caused by the misconduct (whether negligent or intentional) of any Owner, in which case the Association shall not assess the other Owners for such Restoration or Repair Work costs and shall in its reasonable discretion assess the cost of the Restoration or Repair Work exclusively against the responsible Owner's Unit. Such additional funds shall be deposited with the Trustee and released together with insurance proceeds or Condemnation award proceeds for reconstruction.

(ii) As to Units, in the event the cost of Restoration or Repair Work of all or a portion of a Unit exceeds available insurance or Condemnation proceeds and reserves, the respective Owner(s) shall bear such cost and shall deposit with the Trustee, within 30 days after demand by the Trustee, the amount of such excess, to be disbursed in accordance with this Article. If any Owner shall fail to make such deposit, the Trustee shall direct the Association to enforce the collection of such unpaid sums. If payment is not made, then the Association or a non-defaulting party may deposit the same, and the defaulting Owner shall reimburse the paying party upon demand. If such reimbursement is not made, the Association shall enforce the collection of such unpaid reimbursement.

(k) Conditions for Restoration.

(i) Upon settlement of the claim, payment of its share of the deductible owed in the connection with the loss, if any, and receipt of any First Mortgagee or Limited Partner consent required, the affected Owner(s) shall undertake repair and/or reconstruction of the Unit owned by such Owner. Each Owner is responsible for repairing or replacing the property within its Unit which is not part of the Common Elements or any other Unit. The Association is responsible for repairing or replacing the Common Elements. Each Owner and the Association, as applicable, shall promptly remove any debris or damaged portions of the Project from its property and shall otherwise cause its property to be in a clean, safe, and orderly condition during Restoration or Repair Work.

(ii) Restoration or Repair Work on any portion of the Project for which insurance is required under this Declaration must be performed promptly by the affected Owner or the Association, as applicable, unless (A) the Declaration is terminated in accordance with Section 10.4; (B) Restoration or Repair Work would be illegal under any state or local statutes or ordinance governing health or safety or would not be permitted under the loan documents governing a First Mortgagee's loan to an Owner; or (C) following payment in full of the applicable First Mortgage thereon, the Owner provides written notice to the Association of its election not to undertake the Restoration or Repair Work on its Unit within 90 days of the casualty or Condemnation, provided that, unless the Declaration is terminated in accordance with Section 10.4, any Owner electing not to undertake Restoration or Repair Work following payment in full of the applicable First Mortgage thereon shall be subject to the remedies provided for in Section 10.5. If the Declaration is not terminated, Assessments will remain payable during the period of insurance adjustment and Restoration or Repair Work.

(iii) If Restoration or Repair Work of any damaged or destroyed Units is required pursuant to the provisions of this Article 10, such Restoration or Repair Work shall comply with this Declaration and be commenced and diligently pursued until Substantial Completion in as timely a manner as practicable and shall be performed by reputable contractors experienced in the construction of structures similar to the improvements to be reconstructed. Plans and specifications for such Restoration or Repair Work shall be prepared by a reputable architect experienced in the design of structures similar to the Building including the original Plans and Specifications, which shall provide for the Building to be repaired or rebuilt as nearly as commercially practicable to that which was constructed prior to the casualty or Condemnation.

(iv) If, to perform any Restoration or Repair Work, it becomes necessary to obtain a variance, special permit or exception or change in zoning or other laws, and if the Association believes it is reasonably possible to obtain the same and so notifies the Owners, Limited Partners, and their Mortgagees in writing, then the parties shall cooperate to obtain such variance, special permit or exception or change in law. The legal and architectural fees and all other costs and expenses of applying for and/or obtaining such variance, special permit or exception or change in law shall be considered as part of the cost and expense of carrying out the Restoration or Repair Work.

(v) If any Restoration or Repair Work cannot be carried out in compliance with law, and if a variance, special permit or exception or change in law is not obtained, then necessary adjustments shall be made so that the Project, as repaired or replaced, complies with all applicable laws.

(vi) Prior to commencement of Restoration, the budget, schedule, contract, contractors, plans and specifications for the Restoration shall have been approved in advance by the First Mortgagee(s) or its agents, and all Limited Partners such consent not to be unreasonably withheld.

(vii) The Net Proceeds and any deposits made by the Owners shall be deposited with the Trustee and held in the Restoration Fund, and any interest earned on such deposited funds shall be a part of the Restoration Fund.

(viii) Disbursements from the Restoration Fund shall be made by the Trustee to an Owner responsible for any portion of the Restoration or to the Association or to any contractor or any subcontractor in an amount not exceeding the cost of the work completed since the last disbursement, following receipt by the Trustee and the First Mortgagee(s) and all Limited Partners of satisfactory evidence of the state of completion, and of performance of the work in a good and workmanlike manner in accordance with the contracts, plans and specifications, and of evidence that no mechanics' or materialmen's liens shall have been filed and remain undischarged and that the waivers, insurance, bonds or other security against mechanics' liens continue in effect until the expiration of any applicable statute of limitations for the enforcement of mechanics' liens.

(ix) Unless the First Mortgagee(s) instructs the Trustee otherwise, the Trustee must retain 10% of all requests for disbursements from the Restoration Fund as retainage ("**Retainage**") until Restoration is fully complete, except that no

Retainage shall be required for architectural, engineering, or other design fees. The Trustee shall not be obliged to make disbursements from the Restoration Fund more than once every 30 days. The Retainage shall not be released until an independent inspecting engineer selected by the First Mortgagee(s) certifies to the affected First Mortgagee(s) that the Restoration of the Project has been completed in accordance with the applicable provisions of this Declaration.

(l) Partial Restoration. If all the Owners and First Mortgagees and the Limited Partner agree that a portion of the Project will not be repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units or to First Mortgagees, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or First Mortgagees, as their interests may appear, in proportion to the common expense liabilities of all the Units. If the Owners vote not to rebuild any Unit, that Unit's allocated interests shall be reallocated accordingly, and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocation.

(m) Disbursement of Surplus Proceeds. Upon completion of the Restoration or Repair Work, any surplus in the Restoration Fund held by the Trustee in excess of the cost of such Restoration or Repair Work shall be allocated by the Board among the Owners proportionately, according to the percentage ownership interest in the Common Elements appurtenant to each Unit, and the amount allocated to each Unit shall be disbursed by the Trustee in the following manner:

(i) First, to First Mortgagees in an amount equal to the percentage ownership interest in the Common Elements subject to the First Mortgage, but not exceeding the balance due on the applicable First Mortgage;

(ii) Second, to any junior Mortgagees in the order of their priority, each receiving an amount equal to the percentage ownership interest in the Common Elements subject to the junior Mortgage, but in each case in an amount not exceeding the balance owed on the applicable junior Mortgage;

(iii) Third, to the Owner.

(n) Association Procedures. From time to time, the Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, allocation of insurance or Condemnation proceeds, and any other matters of claims adjustment it deems reasonably necessary or appropriate, so long as such policies and procedures are consistent with this Declaration.

(o) Notwithstanding the foregoing requirements set forth in this Section 10.2, to the extent a Casualty or Condemnation relates solely to a specific Unit, the First Mortgagee of such Unit may control the disbursement procedures and disbursement requirements pursuant to its applicable loan documents, and the Net Proceeds may be held and disbursed by such First Mortgagee.

10.3 **Special Rules for Casualty or Condemnation affecting Common Elements**.

(a) The Association is irrevocably appointed as attorney-in-fact to perform any Restoration or Repair Work to the Common Elements insured by the Association upon their damage or destruction, obsolescence, termination or Condemnation. All of the Owners irrevocably constitute and appoint (i) the Trustee designated for such purpose as their true and lawful attorney in their name, place, and stead for the purpose of receiving any insurance or Condemnation proceeds, and (ii) the Association for the purpose of promptly performing any Restoration or Repair Work or reconstruction with respect to the Common Elements.

(b) As attorney-in-fact, the Association, by its duly authorized officers or agents, shall have full and complete authorization, right, and power to make, execute, and deliver any contract or other instrument which is necessary and appropriate to perform any Restoration or Repair Work in a manner consistent with the Plans and Specifications.

(c) The Association shall use the proceeds of any insurance or Condemnation award received for Restoration or Repair Work for the Project unless all the Owners elect to terminate the Association pursuant to Section 10.4. In the event all the Owners vote to terminate the Planned Community pursuant to Section 10.4 and not to undertake the Restoration or Repair Work, the Association shall distribute the proceeds of any insurance, Condemnation award, or sale among the applicable Owners in accordance with the provisions of Section 10.4, subject to Section 11.7 (concerning rights of First Mortgagees to insurance or Condemnation proceeds).

10.4 **Termination of Planned Community resulting from Casualty or Condemnation**.

(a) Following any casualty or Condemnation of the Planned Community that: (i) (1) in the case of any casualty, materially and adversely damages the Planned Community, or (2) affects by Condemnation more than 50% of the Planned Community, and (ii) in any event, materially and adversely diminishes the use and function of the Project, the Planned Community may be terminated upon the unanimous approval of the Owners, subject to consent by all First Mortgagees and all Limited Partners. For purposes of subsection 10.4(a)(i)(l) above, the Planned Community shall be deemed "materially and adversely damaged" if the required Restoration or Repair Work would: (i) exceed 50% of the replacement cost of the Building, or the affected Units, as applicable; (ii) exceed the insurance proceeds and reserve available to the Owners for Restoration or Repair Work; or (iii) not be permitted by applicable governmental authority or the loan documents governing a First Mortgagee's loan.

In such instance, all the Owners shall be free to sell all their rights to a third party. Upon the closing of the sale of all the Owners' rights to a third party buyer, with any such sale subject to prior written consent of the Mortgagees, the Association shall, if requested by all the Owners (with consent therefor from all Mortgagees and all Limited Partners), record a notice setting forth such fact or facts and, upon recording of such notice the entire Property shall thereafter be free and clear of the provisions contained in this Declaration, the Planned Community Map, and the Association's Articles and Bylaws.

Each Owner, by accepting a deed to a Unit, agrees to execute all documents reasonably required to confirm or ratify the sale contemplated in this subparagraph including, but not limited to, deeds and bills of sale. In addition, each Owner, by accepting a deed to a Unit, irrevocably designates and appoints the Trustee as the attorney-in-fact for such Owner to execute all documents reasonably required to accomplish the sale contemplated in this subparagraph including, but not limited to, deeds, bills of sale and closing statements.

The proceeds of insurance or Condemnation and the proceeds of such sale shall be collected by the Trustee and applied first to the payment of expenses of the sale, and then divided according to each Owner's respective percentage ownership interest therein as shown by the insurance policies, if so shown, and otherwise according to each Owner's percentage ownership interest in the Common Elements. The funds in each account established upon such division (without contribution from one account to another) shall be applied by the Trustee for the following purposes in the order indicated: (A) for payment of real estate taxes and other assessments given priority by statute to any lien held by a First Mortgagee; (B) for payment of the balance of all amounts secured by the lien held by any First Mortgagee on any portion of the Project; (C) for payment of unpaid Common Expenses; (D) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and (E) for payment of the balance remaining, if any, to the Owners. The provisions of this subparagraph shall not be construed as limiting in any way the right of a First Mortgagee (in case the proceeds allocated under clause (B) above shall be insufficient to pay the indebtedness secured by this lien) to assert and enforce the personal liability for such deficiency, if any, of the Person(s) responsible for payment of such indebtedness.

(b) If all of the Owners, the First Mortgagees, and all Limited Partners vote not to rebuild a Common Element following any casualty or Condemnation on the basis that the decision not to rebuild would not materially and adversely affect the use or operation of the Units in any manner which would reduce the overall revenue reasonably anticipated to be generated from the Project, then the Association shall have no obligation to initiate any Repairs thereto, and any insurance or Condemnation proceeds received by the Association shall be distributed to all Owners in accordance with their Assessment Allocation.

10.5 **Remedies for Failure to Rebuild**. In the event that the applicable First Mortgagee has been paid in full and an Owner: (i) elects not to undertake Restoration or Repair Work on its Unit pursuant to circumstances set forth in Sections 10.2(l)(ii)(A), (B), and (C) above; or (ii) fails to commence that Restoration or Repair Work within 180 days from the date of the casualty or Condemnation; or (iii) fails to diligently and continuously undertake such Restoration or Repair Work to Substantial Completion on a commercially reasonable basis, then the Association, in addition to all other remedies available at law and in equity, shall immediately commence and diligently undertake that Restoration or Repair Work to Substantial Completion on that portion of the Project within such Owner's Unit necessary to permit the reconstruction, use, and operation of the other Owners' Units (including the rebuilding of Building structural components necessary or appropriate for the continued operation of the other Units) to substantially the same condition in which they existed prior to the casualty or Condemnation. The Association shall have access to all insurance, Condemnation and other proceeds payable to such non-repairing Owner to exercise its remedies. The Association shall have the right (but not the obligation) to seek the appointment of a receiver or other court authorization to exercise its remedies. All costs incurred by the Association under this Section not reimbursed by insurance or Condemnation proceeds shall become the personal financial obligation of the non-repairing Owner and may be collected by the Association in any manner provided in this Declaration or otherwise available at law and in equity. For the avoidance of doubt, so long as any First Mortgage remains a lien on the applicable Unit, then the First Mortgagee shall have the right to notice of any Owner failure under this Article 10 and shall have the right to cure such Owner failure and receive payment of all insurance proceeds directly for such purpose.

10.6 **Adjustment of Other Claims**. Each Owner shall be responsible for adjustment of claims, payment of deductibles, disbursement of insurance proceeds, and related matters with respect to commercial general liability or any other policies carried by such Owner as primary insured purchased for such Owner's benefit (as opposed to policies carried by the Association for the Project's benefit) and not expressly addressed in this Article 10.

10.7 **Reservation of Rights**. Nothing in this Declaration prohibits an Owner or the Association from pursuing a claim against a Person seeking damages or other remedies for a casualty caused by negligence or willful misconduct.

ARTICLE 11
MORTGAGEE AND LIMITED PARTNER PROTECTIONS; LIMITED PARTNER INTERESTS

11.1 **Percentage of First Mortgagee Consent**. Various provisions in this Declaration prohibit certain designated actions without the approval or consent of all or a specified percentage of First Mortgagees. If the approval of only a specified percentage of First Mortgagees is required, the percentage of First Mortgagees who have given any such approval or consent shall be deemed to be equal to (a) the number of votes in the Association allocated to Units that are subject to Security Interests which are held by First Mortgagees and who have given such approval or consent, divided by (b) the total number of votes in the Association allocated to all Units that are subject at the time to Security Interests held by First Mortgagees.

11.2 **Addresses for Mortgagees; Notice of Actions**. Until further notice, notices to Mortgagees shall be sent to the address shown in Exhibit D, as such exhibit may be updated from time to time by the Association based on a written request of an Owner or a Mortgagee. All other Mortgagees shall deliver written notice to the Association containing the mailing address and electronic notice addresses to be used by the Association in providing notices hereunder. As of the date of this Declaration, the First Mortgagee of the Housing Unit is U.S. Bank National Association, a national banking association. The Association shall give prompt written notice of the following to the Limited Partner at the address specified in Exhibit D, to each First Mortgagee identified in this Section 11.2 for so long as they hold a First Mortgage on a Unit, and to each additional Mortgagee for whom a notice address has been delivered to the Association hereunder:

(a) any Condemnation loss or any casualty loss which affects a material portion of the Unit or the Common Elements in which an interest is held by such Mortgagee;

(b) any delinquency in the payment of Assessments which remains uncured for 30 days by an Owner in which the Limited Partners have an interest or whose Unit is encumbered by a Security Interest held by such Mortgagee, as applicable;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, unless substantially equivalent coverage is provided without interruption by a replacement policy;

(d) any other proposed action that would require the consent of Mortgagees or Limited Partners hereunder;

(e) any judgment rendered against the Association that is not covered (subject to reasonable deductible or retention limits) by insurance policies maintained for the benefit of the Association;

(f) receipt of notice of commencement of any Condemnation or eminent domain proceedings with respect to any part of the Property:

(g) any default under the Planned Community Documents with respect to the Owner in which the Limited Partners have an interest or a Unit subject to its Mortgage, as applicable, if such default is not cured by such Owner within 30 days after notice by the Association to such Owner of the default;

(h) any Lien Notice delivered to an Owner;

(i) to the extent the Association has been notified, any default under a Mortgage; and

(j) any enforcement action is commenced under Articles 4, 5, or 6 against the Unit encumbered by such Mortgagee or the Owner of such Unit.

11.3 **Consent by Mortgagees and Limited Partner Required**. The Association may not take any of the following actions without the unanimous prior written consent of all Owners and First Mortgagees and each Unit Owner's Limited Partners:

(a) convey or encumber the Common Elements, provided that the granting of easements for public utilities, for construction and maintenance of roads within the Project or for other purposes permitted by this Declaration or laundry, cable and similar leases and agreements in the normal course of business will not be deemed a conveyance or encumbrance within the meaning of this clause;

(b) restore or repair of the Project (after significant casualty damage or partial Condemnation) in a manner other than that required hereunder or otherwise specified in this Declaration;

(c) terminate this Declaration or change the Planned Community;

(d) change the Assessment Allocation of or the voting rights allocable to any Unit;

(e) use insurance proceeds for other than the repair, replacement or reconstruction of the Project, unless otherwise permitted under Article 10 of this Declaration or surplus proceeds remain after repair, replacement or reconstruction has been completed;

(f) change the method for determining the obligations, Assessments, dues or other charges that may be levied against an Owner of a Unit;

(g) by act or omission, change, waive or abandon any scheme of regulation or enforcement pertaining to the architectural design, exterior appearance or maintenance of Units or Common Elements (provided, however, the issuance or amendment of architectural standards, procedures, Rules and Regulations, or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this subsection), or, after Initial Construction of Project Improvements, make any structural modifications to the Building, make any modifications materially and adversely affecting the exterior of the Building or any Common Element;

(h) fail to maintain insurance as required by this Declaration;

(i) modify the permitted use of the Project, including the rights to use the Common Elements;

(j) merge the Project with any other common interest community;

(k) decide not to repair or replace the Common Elements in a manner other than that required hereunder or otherwise specified in this Declaration:

(l) amend the Declaration, the Planned Community Map or Bylaws; or

(m) amend the Horizontal Boundary or Vertical Boundary of an Unit encumbered by such Mortgagee's Mortgage.

11.4 **Notice of Objection**. Subject to Section 11.9, a Limited Partner or Mortgagee with consent rights hereunder shall provide the Secretary of the Association with written notice of its consent or objection, if any, to any proposed amendment or action requiring the approval of a Limited Partner or Mortgagee within 60 days following the delivery by the Association of notice of such proposed amendment or action.

11.5 **Mortgagee's Rights; Rights of Limited Partner**.

(a) Advances. First Mortgagees, and all Limited Partners, jointly or singly, may: pay taxes or other charges which are in default and which may or have become a charge against any Unit or Common Elements or improvements thereon; may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy. First Mortgagees or any Limited Partner(s) making such payments shall be owed immediate reimbursement from the Association to the extent that such payments were the responsibility of the Association pursuant to this Declaration.

(b) Cure Rights. Each Limited Partner and the holder of a Mortgage shall be entitled (but not obligated) to cure any delinquency in the payment of Assessments or any other default on the part of the Owner of a Unit encumbered by such Mortgage for 30 days following receipt of the notice required by Section 11.2, or if such default cannot be cured within said 30 days despite commercially reasonable efforts, then such longer time as may be necessary to cure if acting in good faith and with reasonable diligence. The Association shall accept payment or performance by said Limited Partner or Mortgagee of any act or obligation with respect to such Unit to be performed under the terms hereof with the same force and effect as if paid or performed by such Owner.

(c) Financial Statements. If the Association has prepared financial statement concerning its operations for any fiscal year, any First Mortgagee and any Limited Partner shall be entitled to obtain a copy of such financial statement by submitting a written request for such copy. If the Association has not obtained an audited financial statement, any First Mortgagee shall be entitled to have an audited statement prepared at such First Mortgagee's own expense. No such audit shall interfere unreasonably with the normal activities and operations of the Association. The Association shall be entitled to obtain a copy of any audited financial statement prepared at the direction of a First Mortgagee by submitting a written request for such copy.

(d) Examination of Records. Any First Mortgagee and any Limited Partner shall have the right, upon reasonable request to the Board of Directors, to examine the Association's books and records at any reasonable time.

11.6 **Limitations on First Mortgagees' Rights**. No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Board of Directors;

(b) prevent the Association or Board of Directors from complying with its obligations under the Planned Community Documents; or

(c) prevent any Trustee or the Association from receiving, using, and/or distributing any insurance proceeds in accordance with, and subject to, the requirements of Article 10 of this Declaration.

11.7 **Distribution of Insurance or Condemnation Proceeds**. In the event of a distribution of insurance proceeds or Condemnation award allocable among the Units for losses to, or a Condemnation of, all or part of the Units or Common Elements when reconstruction is not undertaken, neither the Owner nor any other Person shall take priority in receiving the distribution over the right of any First Mortgagee with a valid Mortgage as to a Unit.

11.8 **Title Taken by First Mortgagee**. A First Mortgagee who obtains title to the Unit pursuant to remedies exercised in enforcing its Mortgage, including foreclosure or acceptance of a deed in lieu of foreclosure, will be liable for any Assessments which become due and payable after the date title to the Unit is acquired;. Any Assessments and charges against the Unit which accrue prior to such foreclosure or acceptance of a deed in lieu of foreclosure shall remain the obligation of the defaulting Owner of the Unit; provided nothing here shall limit the applicable Mortgagee's right to pay such accrued Assessments as part of a foreclosure or deed in lieu of foreclosure.

11.9 **Actions Deemed Approved by Mortgagee**. Except as otherwise may be agreed by the Mortgagees and Owners in a construction coordination agreement relating to such parties' rights of approval (which construction coordination agreement shall control with respect to the matters set forth therein for which consent is required), until completion of construction of the Improvements, for any action which requires the approval of any Mortgagees, if any, if Mortgagee fails to respond to any written proposal for such approval within 30 days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), then a second notice shall be sent to such Mortgagee that says "FAILURE TO RESPOND WITHIN THIRTY DAYS SHALL MEAN YOU HAVE APPROVED THE REQUESTED ACTION", and if Mortgagee shall fail to respond to such second notice within 30 days, such Mortgagee shall be deemed to have approved such proposal unless such Mortgagee has requested in writing additional information or additional time to evaluate proposals. From and after the completion of construction of the Improvements, the failure to provide an objection (if any) shall not be deemed to constitute consent or a waiver of Mortgagee's right to object to such amendment or action. Any consent of an Owner's limited partner or investor member required pursuant to this Declaration shall not be unreasonably withheld.

11.10 **Rights of Specified Limited Partner / Limited Partner**. In addition to the rights granted to the Limited Partner hereunder, other limited partners or members of any Owner holding at least 51% interest in such Owner entity shall be entitled to the rights granted to First Mortgagees under this Article 11; provided, however, that such limited partner or member shall provide written notice to the Association of such partnership or membership interest and shall provide reasonable evidence thereof, except that no notice shall be necessary to the Association with respect to the Limited Partners.

ARTICLE 12
DURATION OF COVENANTS; AMENDMENT AND TERMINATION

12.1 **Term**. This Declaration and any amendments or supplements to it shall remain in effect in perpetuity, unless otherwise terminated or modified as provided in this Article.

12.2 **Amendment of Declaration**. Subject to Sections 3.10 and 11.3, and except to the extent that this Declaration and CCIOA expressly permit or require amendments that may be executed by the Declarant or by the Association, and except for actions requiring a different approval percentage, this Declaration (including the Planned Community Map) may be amended only by a unanimous vote of the Owners as the Association members in accordance with the requirements of this Declaration and the Bylaws, and subject to the consent of the First Mortgagees and all Limited Partners.

12.3 **Execution of Amendments; Expenses**. Any amendment authorized hereunder shall be executed by an officer of the Association authorized by resolution of the Board of Directors to do so and shall be recorded in the Land Records. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of (a) any Owner desiring an amendment as provided for in this Declaration or CCIOA; (b) the Declarant, to the extent the right to amend this Declaration is reserved to the Declarant and exercised by the Declarant; and (c) in all other cases, by the Association as a Common Expense.

12.4 **Recording of Amendments**. Any amendment to this Declaration made in accordance with this Article shall be immediately effective upon the recording of the executed amendment in the Land Records together with a duly authenticated certificate of the Declarant or the secretary of the Association stating that the required vote of Owners, if any, and required consents of Mortgagees and Limited Partners, as applicable, were obtained and are on file in the office of the Association.

12.5 **Termination of Declaration**. The covenants and restrictions of this Declaration shall run with and bind the Project for the entire term. The Project may only be terminated at an earlier date by the unanimous written consent of the Owners, all Limited Partners, and all Mortgagees. Any partial termination shall require that the Assessment Allocation be adjusted to reflect the revised Gross Floor Areas and the Declaration shall be amended to adjust voting, Assessment Allocation, and other affected provisions hereof accordingly.

ARTICLE 13
MISCELLANEOUS

13.1 **Enforcement; Mandatory Dispute Resolution Process**.

(a) One of the purposes of the Declaration is to establish a harmonious Community. Because the prompt, efficient and fair resolution of any construction or design dispute is desirable, any dispute arising out of or relating to the Units or the Common Elements must be resolved as set forth in the Dispute Resolution Rider attached to this Declaration, except for "**Excluded Claims**," which are not subject to the Dispute Resolution Rider and are defined to include:

(i) An action by the Association to enforce any provision of Article 4 of this Declaration related to assessment or collection of any Assessments, or to enforce or foreclose any lien for such Assessments;

(ii) An action by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such or ancillary relief as the Association or court may deem necessary to enforce any of the construction, lien, or use restrictions provisions in this Declaration;

(iii) Any action between or among Owners, which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Planned Community Documents;

(iv) Any action in which any indispensable party is not a Party, as defined in the Dispute Resolution Rider;

(v) Any action relating to the enforcement or discharge of any mechanic's lien; and

(vi) An action by Declarant to enforce its special declarant rights, if any.

(b) Excluded Claims shall be pursued through any proceedings at law or in equity in the State Court sitting in the Town. The substantially non-prevailing party in such judicial action shall reimburse the substantially prevailing party for all expenses, fees, and costs, including attorney fees reasonably incurred by the substantially prevailing party in connection with such judicial action.

(c) Notwithstanding anything expressed or implied herein to the contrary, this Section 13.1 may not be amended, rescinded, or otherwise modified without the express written consent of the Declarant and a majority of the Owners; provided, however, that in the event of (i) a foreclosure of either Unit by the First Mortgagee, or (ii) a Limited Partner's removal of an affiliate of Declarant as a partner of either Owner, Declarant shall not have any consent rights under this Section.

13.2 **Non-waiver**. Failure by Declarant, the Association, or any Owner or Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right of way, or other provision contained in the Planned Community Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

13.3 **Severability**. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect; provided, however, that in the event of (i) a foreclosure of either Unit by the First Mortgagee, or (ii) a Limited Partner's removal of an affiliate of Declarant as a partner of either Owner, Declarant shall not have any consent rights under this Section.

13.4 **Number and Gender**. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

13.5 **Captions**. The captions to the articles and sections and the Table of Contents at the beginning of this Declaration are inserted only for reference and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

13.6 **Conflicts in Legal Documents**. Unless otherwise expressly provided herein, in case of conflicts between the provisions in this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of conflicts between the provisions of the Articles and the Bylaws, the Articles shall control.

13.7 **Successors and Assigns of Declarant**. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder; provided that Declarant's rights and powers may only be assigned by a written and recorded instrument expressly assigning such rights and powers.

13.8 **Exhibits**. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

13.9 **Choice of Law**. This Declaration shall be construed and interpreted in accordance with the laws of the State of Colorado.

13.10 **Interpretation**. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Declaration. The words “include” and “including” shall be construed to be followed by the words: “without limitation.” Every reference to any document, including this Declaration, refers to that document as duly modified from time to time, and includes all exhibits, schedules, and riders to that document. The word “or” includes “and.”

13.11 **Reasonableness**. Wherever this Declaration states that a party shall not unreasonably withhold approval: (a) that party shall not unreasonably delay or condition that approval; (b) no withholding of approval shall be deemed reasonable unless withheld by Notice specifying reasonable grounds, in reasonable detail, for that withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a party grants its consent (or fails to object) to any matter, that shall not waive its rights to withhold consent to any further or similar matter.

13.12 **Time of Essence**. Time shall be of the essence hereunder, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday, or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. on the next succeeding day which is not a Saturday, Sunday, or statutory holiday to exercise such right or discharge such obligation.

(The balance of this page is intentionally left blank.)

Declarant has executed this Declaration effective as of the date first set forth above.

DECLARANT

TOWN OF FRISCO,

a Colorado home rule municipal corporation

By: ______________________________
Name: ______________________________
Its: Mayor

(S E A L)

Attest:

____
Stacey Campbell, Town Clerk

DISPUTE RESOLUTION RIDER

to

DECLARATION

FOR

101 WEST MAIN SMALL PLANNED COMMUNITY

(A COMMON INTEREST COMMUNITY)

This DISPUTE RESOLUTION RIDER is attached to and incorporated into the foregoing DECLARATION FOR 101 WEST MAIN SMALL PLANNED COMMUNITY.

I. Definitions.

a. Construction and Design Professionals mean:

(i) Martin-Harris Construction, Inc. as the Project general contractor,

(ii) Allen-Guerra Architecture as the Project architect,

(iii) any other architect, contractor, subcontractor, developer, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to the Premises engaged by Declarant or any affiliate of the Declarant, and

(iv) the owners, members, managers, partners, shareholders, directors, officers, employees, agents, contractors, subcontractors, vendors, and affiliates of each party listed in (i) - (iv).

b. Construction Defect Action means any legal proceeding for damages, indemnity, subrogation, or contribution, regardless of the theory of liability, brought against:

(i) any Construction and Design Professional that asserts a claim for damages or loss to, or the loss of use of, real or personal property, or any personal injury caused by a defect in the design or construction of a Unit or the Common Elements; and

(ii) the Declarant or a Director that asserts a claim of breach of fiduciary duty that arises from an alleged damages or loss to, or the loss of use of, real or personal property, or any personal injury caused by a defect in the design or construction of a Unit or the Common Elements.

II. Purpose. Any Construction Defect Action must be pursued according to this Rider

III. Right to Inspect and Repair.

a. Construction and Design Professionals may access the Community (including the subject Unit) at a reasonable time to inspect the Community (including the subject Unit) and investigate the Construction Defect Action.

b. Construction and Design Professionals may repair, replace, and restore any improvements including the Units and Common Elements to resolve a Construction Defect Action.

IV. Association Construction Defect Claims. The Association may only commence a Construction Defect Action according to the Act.

V. Arbitration. As the exclusive means of resolving through adversarial dispute resolution any Construction Defect Actions, a party shall demand that the dispute be resolved by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules. Each party hereby consents to any such disputes being resolved by arbitration. Judgment on the award rendered in any arbitration may be entered in any court having jurisdiction. The arbitrator must be a licensed attorney or retired judge with a minimum of ten years' experience in construction defect litigation.

VI. Waiver of Jury Trial. THE OWNERS AND THE DECLARANT HEREBY WAIVE ANY RIGHTS TO TRIAL, INCLUDING TRIAL BY JURY IN A COURT OF LAW, IN ANY CONSTRUCTION DEFECT ACTION.

VII. Waiver of Damages. The Owners and the Declarant hereby waive the right to seek or recover special, secondary, consequential, incidental, punitive, or exemplary damages, damages for mental anguish or emotional distress, damages for pain or suffering, and damages for noneconomic loss or injury or for derivative economic loss or injury.

VIII. Confidentiality. The Owners and the Declarant shall treat as confidential and not disclose any pleadings, proceedings, and information exchanged or disclosed during the Construction Defect Action, nor the existence, content, or result of the proceeding except:

a. as necessary in connection with the prosecution or defense of the arbitration; or

b. to comply with an obligation imposed by law.

Exhibit A

Legal Description of Property subject to this Small Planned Community Declaration

[to be updated based on the final title commitment]

LOT B-1, AMENDED WEST FRISCO 70, FILING NO. 2, ACCORDING TO THE PLAT FILED APRIL 16, 1974 UNDER RECEPTION NO. 140796, COUNTY OF SUMMIT, STATE OF COLORADO.

NOTE: TAX SCHEDULE NO. 1100169

also known by street number as 101 West Main Street, Frisco, CO 80443

Exhibit B

Assessment Allocations

	Assessment Allocation
Housing Unit, including its common areas	98.50%
Commercial Unit	1.50%
Total	**100.0%**

Exhibit C

Permitted Encumbrances

[to be updated based on the final title commitment]

Recording data for recorded easements and licenses appurtenant to, or included in, the Project, or to which any portion of the Project is or may become subject by virtue of a reservation in the Declaration, are as follows:

1. RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN FOR 101 W. MAIN STREET, TOWN OF FRISCO, SUMMIT COUNTY COLORADO RECORDED JUNE 22, 2023 UNDER RECEPTION NO. 1312893 TO THE U.S. BANK NATIONAL ASSOCIATION DEED OF TRUST.

2. RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED APRIL 18, 1902 IN BOOK 66 AT PAGE 43 AND RECORDED MAY 10, 1905 IN BOOK 89 AT PAGE 74

3. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, AS CONTAINED IN INSTRUMENT RECORDED APRIL 10, 1973, IN BOOK 235 AT PAGE 264 UNDER RECEPTION NO. 133040 AND AS AMENDED IN INSTRUMENT RECORDED APRIL 15, 1974, IN BOOK 252 AT PAGE 130 UNDER RECEPTION NO. 140797

4. 20’ UTILITY EASEMENT AND NON-EXCLUSIVE WALKWAY EASEMENT DEDICATED ON THE PLAT OF WEST FRISCO 70 FILING NO. 2 RECORDED APRIL 16, 1974 UNDER RECEPTION NO. 140796.

5. ANY RIGHTS OR INTERESTS OF THIRD PARTIES WHICH EXIST OR ARE CLAIMED TO EXIST IN AND OVER THE PRESENT AND PAST BED, BANKS OR WATERS OF TEN MILE CREEK.

6. TERMS, CONDITIONS AND PROVISIONS OF FISHERY HABITAT EASEMENT RECORDED SEPTEMBER 27, 1990 AT RECEPTION NO. 393380.

7. MEMORANDUM OF PURCHASE AND SALE OF LEASE AND SUCCESSOR LEASE RECORDED MARCH 11, 2008 UNDER RECEPTION NO. 882613 AND RECORDED JANUARY 6, 2009 UNDER RECEPTION NO. 902976 AND RECORDED JANUARY 24, 2012 UNDER RECEPTION NO. 984744. ASSIGNMENT OF AGREEMENT RECORDED OCTOBER 08, 2013 AT RECEPTION NO. 1038768. SUBORDINATED BY SUBORDINATION RECORDED AUGUST 28, 2025 UNDER RECEPTION NO. 1358646.

8. TERMS, CONDITIONS AND PROVISIONS OF REVOCABLE LICENSE FOR USE OF PUBLIC RIGHT OF WAY RECORDED SEPTEMBER 14, 2009 AT RECEPTION NO. 922489.

9. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AFFORDABLE HOUSING FINANCING FUND LAND BANKING PROGRAM DECLARATION OF RESTRICTIVE COVENANTS RECORDED AUGUST 28, 2025 UNDER RECEPTION NO. 1358627.

10. TERMS, CONDITIONS AND PROVISIONS OF RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN FOR 101 W. MAIN STREET, TOWN OF FRISCO, SUMMIT COUNTY COLORADO RECORDED JUNE 22, 2023 UNDER RECEPTION NO. 1312893.

11. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN 101 W MAIN HOUSING PLANNED UNIT DEVELOPMENT RECORDED MAY 22, 2024 UNDER RECEPTION NO. 1330940.

12. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN LANDLORD'S RIGHT OF FIRST OFFER AND REFUSAL AGREEMENT RECORDED AUGUST 28, 2025 UNDER RECEPTION NO. 1358644.

13. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DEVELOPER IMPROVEMENTS AGREEMENT RECORDED JUNE 08, 2026 UNDER RECEPTION NO. 1375828.

Recorded after this Declaration:

14. MATTERS SET FORTH ON THE POST-COMPLETION 101 WEST MAIN PLANNED COMMUNITY MAP RECORDED CONTEMPORANEOUSLY HEREWITH.

Exhibit D

Notice Addresses

If to Declarant:	Town of Frisco P.O. Box 4100 (Mailing) 1 East Main Street (Physical) Frisco, CO 80443 Attn: Community Development Director
with a copy to:	Murray Dahl Beery & Renaud LLP 710 Kipling Street, Suite 300 Lakewood, CO 80215 Attn: Thad W. Renaud, Esq.
If to Housing Unit Owner:	c/o The NHP Foundation 1401 H Street NW, Suite 1000 Washington, DC 20005 Attn: John Welsh, Senior Vice President
with a copy to:	New Communities Law PLLC 1624 Market Street, Unit 400 Denver, CO 80202 Attn: Ben Doyle, Esq.
with copies to Limited Partner:	USB Colorado State Investor I, LLC c/o U.S. Bancorp Impact Finance 505 North Seventh Street SL-MO-T10F St. Louis, MO 63101 USB Project No: 31302 Attn.: Director of LIHTC Asset Management Phone: (314) 335-2600 and U.S. Bancorp Community Development Corporation c/o U.S. Bancorp Impact Finance 505 North Seventh Street SL-MO-T10F St. Louis, MO 63101 USB Project No: 31302 Attn.: Director of LIHTC Asset Management Phone: (314) 335-2600 and

Jill Goldstein, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Phone: (402) 346-6000

with copies to First Mortgagee:

U.S. Bank National Association
c/o U.S. Bancorp Impact Finance
505 North Seventh Street
St. Louis, MO 63101
SL-MO-T10F
Attention: Director of LIHTC Asset Management

with a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Alison Seaborne

Exhibit E

Prohibited Uses

massage parlor, hot tub facility, or suntan facility, race track or other facility used for gambling, such as off track betting, store the principal business of which is the sale of alcoholic beverages for consumption off premises, vehicle repair services; adult book/film store; on-premises dry cleaners (but drop off facilities for dry cleaners is permitted); sports bar; liquor store; all-night convenience store; night club; bar or restaurant where the sale of liquor shall constitute more than thirty-percent (30%) of gross sales; pawn shop; game arcade; sale or distribution of drug paraphernalia; sale or distribution of pornographic or sexually explicit materials, or sex paraphernalia; drug or alcohol treatment facilities or clinics, adult motion picture arcade, adult motion picture show, strip show or sale of nudity or sexual services; escort service or dating bureau; a check cashing or payday loan business (provided; however, a bank, credit union, savings and loan or similar financial institution shall be permitted); bail bonds business; any use that emits noxious or offensive odors (provided that this provision shall under absolutely no circumstances be construed to apply to odors normally associated with a restaurant); any use that is illegal or otherwise violates any applicable law; industrial or manufacturing uses; gambling or lottery establishments; any use which produces environmental hazards regulated under applicable environmental laws; any use which increases the insurance costs of the Borrower or the Commercial Space or would constitute a health or safety hazard to residential owners; any use providing, parole, juvenile detention or similar services; 24 hour establishments; tattoo and piercing parlors and headshops; uses producing noise pollution or which are otherwise incompatible with residential uses; or food establishments open before 6 AM or after midnight. For the avoidance of doubt, the parties acknowledge and agree that "massage parlor" shall mean and include any massage or massage-related activities, and that "facility used for gambling" shall mean and include any business that includes solely the sale of lottery tickets or the sale or operation of any pull-tab machines, or bingo or other games of chance;

STAFF REPORT

TO:	**MAYOR & TOWN COUNCIL**
FROM:	**THAD RENAUD, TOWN ATTORNEY**
	JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER
RE:	**LICENSE FOR USE OF PUBLIC RIGHT OF WAY 101 WEST MAIN STREET, BETWEEN THE TOWN OF FRISCO AND WEST MAIN APARTMENTS LLLP**
DATE:	**JUNE 29, 2026**

Summary & Background:

The purpose of this item is to consider approval of a Revocable License for Use of Public Right-of-Way between the Town of Frisco ("Town") and West Main Apartments LLLP ("Licensee") associated with the redevelopment of the 101 West Main affordable housing project.

The License authorizes the temporary use of Town-owned right-of-way adjacent to the project site for the construction and installation of infrastructure improvements necessary to support development of the affordable housing project. The License also authorizes access by Martin-Harris Construction, LLC, the project's general contractor, and its subcontractors to complete any work. The proposed License establishes the terms under which the Licensee may access and utilize the right-of-way during project construction.

Analysis:

The requested License grants West Main Apartments LLLP a temporary and revocable authorization to use designated portions of Town right-of-way for installation of project-related infrastructure improvements and associated construction activities.
The License requires the Licensee to:

- Provide plans, surveys, exhibits, and related documentation identifying the areas of use and proposed improvements.

- Obtain all required Town permits, approvals, licenses, bonds, and inspections prior to construction activities.

- Construct and maintain improvements in accordance with all Town requirements and applicable laws.

- Perform all maintenance, repair, snow removal, replacement, and upkeep associated with its use of the right-of-way.

- Repair any damage to Town property, utilities, or public infrastructure caused by project construction activities.

The License provides that the Town is not responsible for any costs associated with design, installation, construction, operation, maintenance, repair, replacement, or removal of the improvements. All such obligations remain the responsibility of the Licensee.

The License term begins upon execution and continues through completion of the infrastructure improvements, but no later than issuance of a certificate of occupancy for the project. Following completion of the work, the License will terminate and any required restoration activities must be completed to the satisfaction of the Town.

The agreement preserves the Town's ability to revoke the License in the event of default or failure to comply with License requirements. If revoked, the Licensee must remove incomplete improvements and restore affected right-of-way areas unless the completed improvements are intended for the benefit of the Town or the Frisco Sanitation District.

The License contains comprehensive indemnification provisions requiring the Licensee to defend and hold harmless the Town from claims arising out of construction, installation, maintenance, operation, or use of the improvements.

The License Area consists of all and only those portions of Town-owned or Town-controlled public right-of-way, public place, and related public infrastructure areas shown as being occupied, disturbed, reconstructed, accessed, restored, or otherwise used in connection with the Project, including portions of the following areas:

1. The West Main Street public right-of-way adjacent to the southerly or Main Street frontage of the property commonly known as 101 West Main Street;
2. The Creekside Drive public right-of-way adjacent to the westerly, easterly, or side-street frontage of the property commonly known as 101 West Main Street, as applicable based on the final approved plans

Financial Impact:

There is no direct fiscal impact associated with approval of the License. All costs associated with design, permitting, construction, maintenance, repair, replacement, restoration, insurance, and removal of improvements within the right-of-way are the responsibility of the Licensee.

Alignment with Strategic Plan:
The document and overall project support the following Strategic Objectives in the 2024-2028 Strategic Plan:

- Enhance Community Inclusivity
- Support a Thriving Economy

Sustainability:
The project supports long-term social and economic sustainability by increasing affordable workforce housing inventory within Frisco and supporting year-round residency opportunities for local employees and residents. Providing affordable housing within Town limits may reduce commuting impacts, support local businesses and workforce retention, and advance broader community resiliency goals.

Per the Second Amended & Restated Development Agreement between the Town of Frisco and NHPF West Main, LLC, the developer is required to comply with the Town's Net-Zero Energy requirements.

Staff Recommendation:
Staff recommend that the Town Council review and approve the Revocable License for Use of Public Right-of-Way between the Town of Frisco and West Main Apartments LLLP and authorize the Mayor to execute the agreement

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

Attachment 1 – License for Use of Public Right-of-Way (101 West Main)

LICENSE FOR USE OF PUBLIC RIGHT-OF-WAY

101 West Main

THIS REVOCABLE LICENSE FOR USE OF PUBLIC RIGHT-OF-WAY OR PUBLIC PLACE (“License”) is granted this ___ day of __________, 2026 (the “Effective Date”), by the Town of Frisco, a home rule municipal corporation (“Town”), whose address is P.O. Box 4100, Frisco, Colorado 80443, to West Main Apartments LLLP, a Colorado limited liability limited partnership (“Licensee”), whose address is 1401 H Street, NW, Suite 1000, Washington, D.C. 20005.

RECITALS

A. The Town owns the following public right-of-way or public place (the “Town Property”): Attached as Exhibit A.

B. Licensee owns or controls the following adjoining or related property (the “Licensee’s Property”): 101 West Main Street, Frisco, Colorado.

C. Licensee intends to demolish the current improvements located on Licensee’s Property, including the current building, and develop a multifamily affordable housing project in its place (“Project”). Licensee has hired Martin-Harris Construction, LLC (“General Contractor”) as the general contractor to develop the Project.

D. In connection with the development of the Project, Licensee desires to license the Town Property in order to facilitate the construction of certain infrastructure improvements to be located in the Town Property and to be used in connection with the Project (the “Improvements”), as well as allow ingress and egress by the General Contractor in order to complete such work.

D. Pursuant to the Town Charter, the Town Code, and applicable Colorado law, the Town has authority over the use of municipally owned streets, rights-of-way, and other public places.

E. The Town is willing to grant this license to Licensee, subject to the terms, conditions, limitations, and reservations set forth below.

LICENSE

1. Grant of License.

The Town hereby grants to Licensee, and its General Contractor, subcontractors, invitees, agents or assigns, the exclusive authorization to use the Town Property, subject to all conditions of this License.

As conditions of this License, Licensee shall, at its sole cost and expense:

(a) provide a survey, exhibit, plan set, or other depiction of the Town Property and the Improvements to be located thereon;

(b) install and maintain the Improvements only within the Town Property and only in accordance with conditions of approval of the permits issued by the Town in accordance with applicable laws and regulations;

(c) maintain or provide for the maintenance of the Improvements in a safe, clean, and attractive condition during the term of this License;

(d) provide all routine maintenance, snow removal, repair, replacement, and upkeep necessary for Licensee's use of the Town Property; and

(e) comply with all obligations of indemnification, repair, permitting, removal, and restoration set forth in this License.

The rights granted under this License are expressly subordinate to the Town's continuing rights.

2. Design, Installation, Excavation, Use, and Maintenance.

(a) The Town shall not be responsible for the costs of design, installation, construction, use, operation, maintenance, repair, replacement, and removal of the Improvements.

(b) Licensee may utilize utilities in order to power equipment used to install the Improvements while located in the Town Property.

(c) Licensee assumes full responsibility for any damage to public facilities, utilities, adjacent property, or Town infrastructure caused by or related to the Licensee's activities.

(d) Licensee shall not install, replace, alter, expand, or materially modify the Town Property without first obtaining all Town approvals, permits, licenses, fee payments, and bonds required by the Town Code or other applicable law.

(e) All excavation and construction shall be performed in accordance with Town requirements and all applicable laws, standards, and permits. Licensee shall be responsible for utility locates and for protecting all existing facilities.

(f) Prior to construction, the Town Manager or designee may require review and approval of plans, specifications, insurance documents, schedules, and traffic or safety controls.

(g) Licensee acknowledges that it uses the Town Property at its own risk and is solely responsible for damage to the Town Property and the Improvements caused by public use, Town operations, snow removal, utilities, maintenance, emergencies, or other lawful activities within the Town Property.

3. Repair of Damage.

Licensee shall promptly repair any damage to the Town Property or other public or private improvements caused by Licensee, its contractors, subcontractors, invitees, tenants, customers, or agents or assignees in and to this License . If such damage poses a threat to health, safety, or welfare, the Town may cause repairs to be made immediately at Licensee's expense.

4. Term.

This License shall commence on the Effective Date and shall remain in effect until the completion of the Improvements, but in no event later than the date that a certificate of occupancy is issued for the Project. Licensee may request termination of this License only after completion of the Improvements, unless otherwise approved in writing by the Town, and restoration of the Town Property to a condition acceptable to the Town.

5. Revocation.

The Town may revoke this License upon written notice to Licensee, including upon the occurrence of any one or more of the following:

(a) breach of this License by Licensee, including failure to maintain, repair, insure, or comply with Town requirements, that is not cured within the time stated in the Town's notice.

Upon revocation, this License shall terminate and be of no further force or effect, and Licensee shall comply with all removal and restoration requirements stated herein.

6. Removal and Restoration.

Upon revocation of this License, or upon the Town's written demand, Licensee shall, at its sole cost and expense and within the time required by the Town, remove the Improvements and restore the Town Property to substantially the same or other Town-approved condition; provided, however, such completed Improvements used for the benefit of the Town or the Frisco Sanitation District shall not be removed or destroyed upon the revocation of this License or upon the Town's written demand, nor shall Licensee bear additional costs related to such revocation or early termination of this License. If Licensee fails to remove such Improvements that are not completed or for the benefit of the Town, the Town may perform or contract for such work and Licensee shall reimburse the Town for all associated costs, including administrative, engineering, legal, and contractor costs.

7. Notice.

Every notice required or permitted under this License shall be in writing and shall be deemed given when personally delivered, delivered by recognized overnight carrier, or sent by certified mail, return receipt requested, to the addresses below, or to such other address as either party may designate in writing.

Town: Town of Frisco, P.O. Box 4100, Frisco, Colorado 80443, Attn: Town Manager

Licensee: c/o The NHP Foundation, 1401 NW, Suite 1000, Washington, DC 20005, Attn: John Welsh, Senior Vice President.

8. Indemnification and Release.

To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold harmless the Town and its elected officials, officers, employees, agents, insurers, and representatives from and against any and all claims, demands, suits, damages, liabilities, losses, judgments, liens, penalties, fines, costs, and expenses, including reasonable attorney fees, arising out of or related to the design, installation, construction, placement, use, occupancy, maintenance, repair, removal, or existence of the Improvements, except to the extent caused by the sole negligence or willful misconduct of the Town.

9. Insurance.

Licensee agrees to procure and maintain, at its own cost, the following policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Licensee under this

License or arising as a result of this License. Such insurance shall be in addition to any other insurance requirements imposed by law.

(a) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall name the Town, its employees and agents as additional insureds and shall include the following provisions: (i) severability of interest; (ii) waiver of subrogation; and (iii) cross liability endorsement.

(b) Every policy required under this Section 9 shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by Licensee. Licensee shall be solely responsible for any deductible losses under any policy required above. Any insurance policy required under this Agreement shall be written by a responsible company.

(c) Prior to commencement of this License, Licensee shall provide the Town with a certificate of insurance completed by Licensee's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this License and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to the Town. The completed certificate of insurance shall be sent to:

Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Finance Director

(d) Licensee shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this License by reason of Licensee's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of Licensee to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which the Town may immediately terminate this License, or at its discretion the Town 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 the Town shall be repaid by Licensee to the Town upon demand.

(e) The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this License, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

10. Intentionally deleted.

11. Miscellaneous.

(a) No Property Right. This License is a permissive, revocable license only and does not convey any easement, leasehold, ownership interest, or vested property right; provided, however, any Improvements solely used for the purposes of the Project shall be conveyed to the Licensee upon the termination of this License.

(b) Binding Effect. This License shall bind Licensee and its successors and assigns with respect to the Town's Property. This Agreement shall be and constitute a real covenant running with the Property, to be recorded in the real property records for Summit County, Colorado. The Licensee may assign its rights under this Agreement to a lender (including U.S. Bank National Association ("Senior Lender")) as collateral for one or more loans made to develop the Project without the Town's consent. Until such time as Senior's Lender's loan has been paid in full, this Agreement shall not be amended, modified or terminated without the prior written consent of Senior Lender. In the event Senior Lender notifies the Town that an event of default has occurred under the loan made by Lender to Licensee, and Lender has exercised its right to assume the rights of Licensee under this License (without an obligation to do so), the Town agrees to attorn to Lender as the "Licensee" hereunder. The Town agrees that this License shall continue in full force and effect as a direct agreement between the Town and Senior Lender, upon all of the terms, covenants, conditions and agreements set forth in the License, except for provisions which are impossible for Senior Lender to perform; provided, however, that in no event shall Senior Lender be liable for any act, omission, default, misrepresentation, or breach of warranty, of any obligations accruing prior to such attornment.

(c) No Assignment Without Consent. Except as provided in Section 11(b) above, Licensee shall not assign this License without prior written consent of the Town.

(d) No Third-Party Beneficiaries. Other than Senior Lender, there are no third-party beneficiaries to this agreement it being the intent of the Town and Licensee that they be and remain the sole beneficiaries to this License.

(e) Governing Law and Venue. This License shall be governed by Colorado law, and venue for any action shall lie in the appropriate court for Summit County, Colorado.

(f) Governmental Immunity. Nothing in this License waives or is intended to waive any limitation, immunity, or protection available to the Town under the Colorado Governmental Immunity Act or other law.

(g) Entire Agreement; Amendment. This License constitutes the entire agreement between the parties regarding the subject matter and may be amended only in a written instrument approved by the Town.

(h) Recordation. The Town may require this License, or a memorandum of this License, to be recorded in the real property records of Summit County.

(i) Non-Appropriation. Nothing in this License shall be construed as creating a multiple-fiscal-year obligation of the Town.

TOWN:

TOWN OF FRISCO, a Colorado home rule municipal corporation

By: ___________________________________
Name: Frederick J. Ihnken
Title: Mayor

ATTEST:

____
Stacey Campbell, Town Clerk

LICENSEE:

WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership

By: West Main Apartments GP, LLC, a Colorado limited liability company, its General Partner

By: The NHP Foundation, a District of Columbia nonprofit corporation, its Managing Member

By: ___________________________________
Name: John Welsh
Title: Senior Vice President

STATE OF _______________)
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ____ day of ______________, 2026, by John Welsh, as Senior Vice President of The NHP Foundation, a District of Columbia nonprofit corporation, as Managing Member of West Main Apartments GP, LLC, a Colorado limited liability company, as General Partner of West Main Apartments LLLP, a Colorado limited liability limited partnership.

WITNESS my hand and official seal.

My commission expires: __________________

____
Notary Public

STAFF REPORT

TO: MAYOR & TOWN COUNCIL

FROM: THAD RENAULD, TOWN ATTORNEY
JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER

RE: AGREEMENT REGARDING DECLARATION OF RESTRICTIVE COVENANTS BETWEEN U.S. BANK NATIONAL ASSOCIATION, COLORADO HOUSING AND FINANCE AUTHORITY, AND THE TOWN OF FRISCO FOR 101 WEST MAIN

DATE: JUNE 29, 2026

Summary & Background:

Town staff are bringing forth an Agreement Regarding Declaration of Restrictive Covenants for 101 West Main Street, between the Town of Frisco, U.S. Bank National Association and the Colorado Housing and Finance Authority (CHFA), for the affordable housing project located at 101 West Main Street for Town Council consideration.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to "preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities." This mission aligns with the Council's strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:

The Town of Frisco has been requested to execute an Agreement Regarding Declaration of Restrictive Covenants in connection with the construction financing for the 101 West Main Apartments affordable housing project. The agreement is between U.S. Bank

National Association, as the construction lender, the Colorado Housing and Finance Authority (CHFA), acting as administrator of the Proposition 123 Affordable Housing Financing Fund, and the Town of Frisco. The agreement is a condition of U.S. Bank providing construction financing for the development of the 52-unit affordable housing project.

The agreement addresses the interaction between the project's construction financing and the Declaration of Restrictive Covenants recorded in favor of CHFA in connection with the Town's $5 million Proposition 123 Land Banking Program grant. The agreement acknowledges that in the event of a borrower default, U.S. Bank may foreclose on its leasehold deed of trust or accept a deed in lieu of foreclosure without obtaining consent from CHFA or the Town, provided the property remains subject to the affordability restrictions contained in the Declaration of Restrictive Covenants. The agreement further allows U.S. Bank to subsequently transfer the leasehold interest following foreclosure, subject to the same affordability restrictions and notice requirements.

The agreement does not remove or modify the affordability requirements imposed through the Proposition 123 funding program. Rather, it provides assurances to the construction lender that its collateral rights may be exercised if necessary while preserving the affordability covenant that encumbers the property. The agreement automatically terminates upon repayment of the construction loan and release of the construction lender's deed of trust.

Financial Impact:
There is no direct fiscal impact associated with execution of the agreement.

Alignment with Strategic Plan:
The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:
- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:
Staff requests the Town Council review the Agreement Regarding Declaration of Restrictive Covenants for 101 W. Main.

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 – Agreement Regarding Declaration of Restrictive Covenants

WHEN RECORDED MAIL TO:

Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attn: Alison Seaborne

(SPACE ABOVE FOR RECORDER'S USE)

AGREEMENT REGARDING DECLARATION OF RESTRICTIVE COVENANTS

THIS AGREEMENT REGARDING DECLARATION OF RESTRICTIVE COVENANTS ("***Agreement***") is made as of [_______________], 2026, by and among **U.S. BANK NATIONAL ASSOCIATION**, a national banking association ("***Construction Lender***"), **COLORADO HOUSING AND FINANCE AUTHORITY**, a body corporate and political subdivision of the State of Colorado, solely in its capacity as the Program Administrator for the Affordable Housing Financing Fund, managed by the Colorado Office of Economic Development and International Trade, a Colorado state agency ("***CHFA***"), and the **TOWN OF FRISCO**, a Colorado home rule municipal corporation (the "***Town***").

RECITALS

A. WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership ("***Borrower***") intends to construct a 52-unit affordable housing apartment project (the "***Project***") located on a leasehold estate over the real property described on **Exhibit A** attached hereto (the "***Property***").

B. Borrower has applied to Construction Lender for a construction loan in the maximum principal amount of [$_______________] (the "***Construction Loan***"), for the purpose of financing a portion of the costs of the construction of the Project. As collateral for the Construction Loan, Borrower has executed that certain Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of even date herewith made by Borrower for the benefit of Construction Lender (the "***Construction Loan Leasehold Deed of Trust***"),

C. CHFA issued that certain Grant Commitment dated as of March 18, 2024 to the Town, in which CHFA agreed to grant $5,000,000 to the Town in connection with the Land Banking Program under Proposition 123. In connection therewith, the Town entered into that certain Declaration of Restrictive Covenants dated as of August 27, 2025 in favor of CHFA (the "***Declaration***"), which Declaration was recorded with the Summit County Recorder on August 28, 2025 as Document Number 1358627.

D. It is a condition precedent to Construction Lender making the Construction Loan that CHFA and the Town enter into this Agreement.

AGREEMENT

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

1. Agreement Regarding Declaration. CHFA and the Town acknowledge and agree that notwithstanding the requirements of Paragraph 6 of the Declaration, Construction Lender may foreclose on the Construction Loan Leasehold Deed of Trust, or accept a leasehold deed in lieu of foreclosure, with prior notice to CHFA, but without the consent of CHFA or the Town, so long as the Project and Property remain subject to the Declaration. In the event Construction Lender becomes the owner of the leasehold pursuant to such foreclosure or deed in lieu of foreclosure, Construction Lender shall be permitted to sell the leasehold, subject to the Declaration, with prior notice to CHFA, but without CHFA's or the Town's consent; provided, however, that any further sale thereafter shall require the consent of CHFA and the Town as required by Paragraph 6 the Declaration. Notice to CHFA shall be provided as set forth above ten (10) business days prior to the filing of a foreclosure compliant, or five (5) busienss days prior to the full execution of the documents effectuating a deed in lieu of foreclosure, as the case may be, and five (5) business days prior to any subsequent sale by Construction Lender to a third-party buyer.

2. Termination. This Agreememt shall automatically terminate upon the repayment in full of the Construction Loan and the reconveyance of the Construction Loan Leasehold Deed of Trust.

3. Notice Address. To the extent notice to CHFA is required hereunder, notice shall be sent to:

Colorado Housing and Finance Authority
1981 Blake Street,
Denver, Colorado 80202
Attn: Legal Operations

4. Effect of Other Agreements. CHFA and the Town acknowledge and agree that Construction Lender neither undertakes nor assumes any responsibility or duty to guarantee or assist in the performance of any obligations under the Declaration, except during such time as Construction Lender shall own the leasehold pursuant to a foreclosure or leasehold deed in lieu of foreclosure.

5. Miscellaneous. This Agreement may be executed in multiple counterparts and the signature page(s) and acknowledgment(s) assembled into one original document for recordation, and the validity hereof shall not be impaired by reason of such execution in multiple counterparts. This Agreement is to be governed according to the laws of the State of Colorado. In the event of action, suit, proceeding or arbitration to enforce any term of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, as determined by the court or arbitrator, all of the prevailing party's costs and expenses, including without limitation attorneys' fees and expert witness fees, incurred by the prevailing party in connection therewith. This Agreement shall inure to the benefit of, and the binding upon, the parties hereto and the respective successors and assigns.

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

CHFA:

COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado, solely in its capacity as the Program Administrator for the Affordable Housing Financing Fund, managed by the Colorado Office of Economic Development and International Trade, a Colorado state agency

By: ________________________
Name: ________________________
Title: ________________________

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this _____ day of _______________, 2026, by _____________________, as _____________________ of the **COLORADO HOUSING AND FINANCE AUTHORITY**, a body corporate and political subdivision of the State of Colorado, solely in its capacity as the Program Administrator for the Affordable Housing Financing Fund, managed by the Colorado Office of Economic Development and International Trade, a Colorado state agency.

Witness my hand and official seal.

My commission expires: ______________________________.

____

Notary Public

[SEAL]

TOWN:

TOWN OF FRISCO, a Colorado home rule municiptal corporation

By: _______________________________
Name: Frederick J. Ihnken
Its: Mayor

ATTEST:

____
Stacey Campbell, Town Clerk

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of ________________, 2026, by Frederick J. Ihnken, as Mayor of the **TOWN OF FRISCO**, a Colorado home rule municiptal corporation.

Witness my hand and official seal.

My commission expires: ________________________________.

____

Notary Public

[SEAL]

CONSTRUCTION LENDER:

U.S. BANK NATIONAL ASSOCIATION,
a national banking association

By: ______________________________________
Name: _____________________________________
Title: ______________________________________

STATE OF _____________)
) SS.
COUNTY OF _________)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _________________, the _____________ of U.S. BANK NATIONAL ASSOCIATION, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _________day of _________________, 2026.

____

Notary Public

My Commission Expires:

____

[update notary based on USB signatory]

EXHIBIT A

Legal Description

[INSERT ONCE FINAL]

STAFF REPORT

TO: MAYOR & TOWN COUNCIL

FROM: THAD RENAULD, TOWN ATTORNEY
JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER

RE: SUBORDINATION AND STANDSTILL AGREEMENT (SWAP), BETWEEN THE TOWN OF FRISCO AND CEDAR RAPIDS BANK AND TRUST COMPANY FOR 101 WEST MAIN

DATE: JUNE 29, 2026

Summary & Background:

Town staff are bringing forth Subordination and Standstill Agreement for 101 West Main Street, between the Town of Frisco, West Main Apartments LLLP, and Cedar Rapids Bank and Trust Company, for the affordable housing project located at 101 West Main Street for Town Council consideration.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to "preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities." This mission aligns with the Council's strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:

The Town of Frisco is a subordinate lender and ground lessor for the 101 West Main Apartments affordable housing development. The project owner, West Main Apartments LLLP, is pursuing refinancing and restructuring of the project's senior financing. As part of that transaction, the Town has been requested to execute a Subordination and

Standstill Agreement with Cedar Rapids Bank and Trust Company, the project's proposed senior lender.

The agreement establishes the priority of the senior lender's financing interests relative to the Town's existing loan interests and provides that, in the event of a borrower default, the Town will subordinate certain rights to those of the senior lender. The agreement also includes standstill provisions that limit the Town's ability to independently enforce certain loan remedies, while the senior lender is exercising its rights under the senior loan documents.

The agreement does not forgive or eliminate any obligations owed to the Town and does not alter the Town's ownership interest in the underlying property. The project remains subject to the existing ground lease and affordability requirements associated with the development. The agreement is intended to facilitate refinancing of the project while maintaining long-term affordability and operational stability of the 101 West Main Apartments.

Financial Impact:
The agreement establishes lender priority and remedies related to existing financing but does not create any new financial obligations for the Town.

Alignment with Strategic Plan:
The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:

- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:
Staff requests the Town Council review the Subordination and Standstill Agreement for 101 W. Main.

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 – Swap Subordination and Standstill Agreement

SUBORDINATION AND STANDSTILL AGREEMENT (SWAP)

THIS SUBORDINATION AND STANDSTILL AGREEMENT (SWAP) (this "**Agreement**") is entered into this _____ day of ____________, 2026 by and among (i) CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation (together with its successors and/or assigns, the "Senior Lender"), (ii) [TOWN OF FRISCO] (the "**Subordinate Lender**"), and (iii) WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership (the "**Borrower**").

Recitals

A. The Borrower is constructing and developing a multi-family affordable housing development (the "**Project**") located in Frisco, Colorado, on a leasehold estate more particularly described in Exhibit A attached hereto (hereinafter, the leasehold estate is referred to as the "Property").

B. The Senior Lender has agreed to enter into an interest rate swap transaction (the "**Senior Loan**") pursuant to that certain ISDA Master Agreement and all schedules and confirmations attached to and referenced therein, date as of [_________], 2026 executed by and between Borrower and Senior Lender (together with all documents related thereto, the "**Swap Agreement**").

C. The Senior Loan is or will be secured by a first mortgage lien (the "**Senior Deed of Trust**") on the Property, executed by the Borrower in favor of the Senior Lender.

D. The Borrower has requested the Senior Lender to permit the Subordinate Lender to make those certain subordinate loans to the Borrower in the amount of (i) $[______] (the "**Capital Loan**"), (ii) $[______] (the "**GAP Loan**"), and (iii) $[______] (the "**Land Lease Loan**", and collectively with the Capital Loan and the GAP Loan, the "**Subordinate Loans**"), and to secure the Subordinate Loan by, among other things, placing a mortgage lien against the Property.

E. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loans and to place a subordinate mortgage lien against the Property subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loans to the Borrower and to place a subordinate mortgage lien against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"**Affiliate**" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"**Borrower**" means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

"**Business Day**" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"**Default Notice**" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a Senior Loan Default has occurred under the Senior Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

"**Person**" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"**Senior Loan Default**" means the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.

"**Senior Loan Documents**" means the Swap Agreement and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Loan.

"**Senior Lender**" means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the Swap Agreement, such other Person shall automatically become the Senior Lender.

"**Subordinate Deed of Trust**" means the [Deed of Trust] encumbering the Property as security for the Subordinate Loan, which the Subordinate Lender will cause to be recorded among the applicable land records immediately before this Agreement.

"**Subordinate Lender**" means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

"**Subordinate Loan Default**" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"**Subordinate Loan Documents**" means the Subordinate Note, the Subordinate Deed of Trust and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

"**Subordinate Note**" means the [Promissory Note] of even date herewith issued by the Borrower to the Subordinate Lender, or order, to evidence the Subordinate Loan.

2. Permission to Place Deed of Trust Lien Against Property.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record the Subordinate Deed of Trust and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the Senior Deed of Trust) to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to the Borrower. If any of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is not true and correct on both of those dates, the provisions of the Senior Deed of Trust and Senior Loan Documents applicable to unpermitted liens on the Property shall apply.

3. Borrower's and Subordinate Lender's Representations and Warranties.

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

(a) Subordinate Note. The Subordinate Note shall be deemed to contain the following provision:

> The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by that certain ISDA Master Agreement and all schedules and confirmations attached thereto and referenced therein (the "Swap Agreement") executed by and between the Borrower and Cedar Rapids Bank and Trust Company, an Iowa state-chartered banking corporation (the "Senior Lender"), to the extent and in the manner provided in that certain Subordination and Standstill Agreement dated as of [__________], 2026 by and among the [TOWN OF FRISCO], the Borrower and the Senior Lender (the "Subordination Agreement"). The Deed of Trust securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Deed of Trust securing the obligations under the Swap Agreement as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Deed of Trust securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement.

Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender (as defined in the Subordination Agreement) under the Subordination Agreement.

(b) Relationship of Borrower to Subordinate Lender and Senior Lender. The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

(c) Term. The term of the Subordinate Note does not end before 6 months after the term of the Senior Loan.

(d) Subordinate Loan Documents. The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents.

(e) Senior Loan Documents. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents.

4. Terms of Subordination.

(a) Agreement to Subordinate. The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Deed of Trust and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Deed of Trust and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Deed of Trust and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Deed of Trust, curing defaults by the Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Deed of Trust, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property).

(b) Subordination of Subrogation Rights. The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Deed of Trust, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Deed of Trust.

(c) Payments Before Senior Loan Default. Until the Subordinate Lender receives a Default Notice of a Senior Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents. Such payments include scheduled principal payments and the Subordinate Lender agrees that Subordinate Loan does not include any hyper-amortization feature. Such payments include simple, non-compounding, interest. Such payments are payable only from surplus cash flow after the payment of operating expenses, replacement reserve contributions, contributions to escrow accounts, and debt service on the Senior Loan from the operation of the Property.

(d) Payments After Senior Loan Default. The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Deed of Trust) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Deed of Trust) without the Senior Lender's prior written consent. If the Subordinate Lender receives written notice from the Senior Lender that the Senior Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

(e) Remitting Subordinate Loan Payments to Senior Lender. If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Agreement Not to Commence Bankruptcy Proceeding. The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

5. Default Under Subordinate Loan Documents.

(a) Notice of Default and Cure Rights. The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents to the extent permitted under Section 5(b). All amounts paid by the Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the Senior Deed of Trust.

(b) Subordinate Lender's Agreement to Standstill. If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, for a period of One Hundred and Eighty (180) days, it will not, without the Senior Lender's prior written consent, accelerate the Subordinate Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

(c) Cross Default. The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such Senior Loan Default.

6. Default Under Senior Loan Documents.

(a) Notice of Default and Cure Rights. The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default as provided below. Subordinate Lender may have up to 30 days from the date of the Default Notice to cure any monetary default under the Senior Loan Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to 60 days from the date of the Default Notice to cure a non-monetary default if during such 60-day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 60-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Deed of Trust.

(b) Cross Default. The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the Senior Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior Deed of Trust to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Deed of Trust. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any Senior Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

7. Conflict.

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior

Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the Senior Deed of Trust and the Subordinate Deed of Trust, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest. The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Deed of Trust for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the Senior Deed of Trust remains a lien on the Property the following provisions shall apply:

(1) The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the Senior Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

(c) No Modification of Subordinate Loan Documents. The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon the Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever and Subordinate Lender agrees that it shall not transfer or assign the Subordinate Loan or the Subordinate Loan Documents without the prior written consent of the Senior Lender.

9. Stabilization, Modification or Refinancing of Senior Loan.

The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) and, in the event of new mortgage debt, Subordinate Lender shall execute and deliver to Senior Lender a new subordination agreement on the same terms and conditions as this Subordination Agreement.

10. Default by the Subordinate Lender or Senior Lender.

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

11. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Cedar Rapids Bank and Trust Company
500 1st Avenue NE, Suite 100
Cedar Rapids, Iowa 52401
Attention: Nick Svare

With a copy to:

Winthrop & Weinstine, P.A.
225 South 6th Street, Suite 3500
Minneapolis, Minnesota 55402
Attention: Holly A. Stocker, Esq.

SUBORDINATE LENDER:

Town of Frisco
Attn: Finance Director
PO Box 4100
Frisco, Colorado, 80443

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

12. General.

(a) Assignment/Successors. This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

(b) No Partnership or Joint Venture. The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent. Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances. The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Deed of Trust is subordinate to the lien, covenants and conditions of the Senior Deed of Trust, or to further evidence the intent of this Agreement.

(e) Amendment. This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located.

(g) Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Deed of Trust; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Deed of Trust, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

[REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]

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

SENIOR LENDER:

CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation

By: ________________________________
Nick Svare
Vice President

STATE OF IOWA)
)
COUNTY OF LINN)

The foregoing instrument was acknowledged before the this ___ day of ___________, 2026 by Nick Svare, a Vice President of Cedar Rapids Bank and Trust Company, an Iowa state-chartered banking corporation, on behalf of said state-chartered banking corporation.

____
Notary Public

SUBORDINATE LENDER:

TOWN OF FRISCO, a Colorado municipality

By: ______________________________
Frederick J. Ihnken
Mayor

STATE OF COLORADO)
)
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before the this ___ day of ____________, 2026, by Frederick J. Ihnken, the Mayor of the Town of Frisco, a Colorado municipality, for and on behalf of said municipality.

____
Notary Public

BORROWER:

WEST MAIN APARTMENTS LLLP, a
Colorado limited liability limited partnership

By: NHPF West Main GP, LLC, a
Colorado limited liability company, its
General Partner

By: The NHP Foundation, a
District of Columbia non-profit
corporation, its Manager

By: ______________________________
Name: ___________________________
Its: ______________________________

STATE OF __________)
)
COUNTY OF _________)

The foregoing instrument was acknowledged before the this ___ day of ____________, 2026, by ____________, the ____________ of The NHP Foundation, a District of Columbia non-profit corporation, the Manager of NHPF West Main GP, LLC, a Colorado limited liability company, the General Partner of West Main Apartments LLLP, a Colorado limited liability limited partnership, for and on behalf of said limited liability limited partnership.

____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The “Property” **is a leasehold estate** over certain real property described in that certain Amended and Restated 101 West Main Ground Lease between the Town of Frisco, Colorado and West Main Apartments, LLLP, dated on or about ___,2026(the (“Ground Lease”). The leasehold estate encumbers real property described in the Ground Lease as:

Lot B-1, Amended West Frisco 70, Filing No. 2, according to the plat filed April 16, 1974 under reception no. 140796, County of Summit, State of Colorado, except for that portion of Lot B-1 that has been subdivided as the “Commercial Unit” under that certain subdivision plat recorded in the real property records for the County of Summit, Colorado, on __________,2026, under Reception Number _______.

STAFF REPORT

TO: MAYOR & TOWN COUNCIL

FROM: THAD RENAULD, TOWN ATTORNEY
JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER

RE: SUBORDINATION AND STANDSTILL AGREEMENT FOR 101 WEST MAIN

DATE: JUNE 29, 2026

Summary & Background:

Town staff are bringing forth a Subordination and Standstill Agreement for 101 West Main Street, between Cedar Rapids Bank and Trust Company (Senior Lender), the Town of Frisco (Subordinate Lender), and West Main Apartments LLLP (Borrower), for the affordable housing project located at 101 West Main Street for Town Council consideration.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to "preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities." This mission aligns with the Council's strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:

The agreement confirms that the Town's loans remain fully secured by a subordinate deed of trust while acknowledging that repayment of the senior loan has first priority. The Town's subordinate lien will remain in place but will be junior to the senior lender's deed of trust throughout the term of the senior financing. The agreement establishes procedures for coordination between lenders in the event of a default. Both lenders are required to provide written notice of borrower defaults to one another and are afforded opportunities to cure defaults before enforcement actions may proceed. The Town is granted the right to cure certain senior loan defaults, while the senior lender similarly receives the opportunity to cure defaults under the Town's subordinate loans.

To protect the project's financial stability, the agreement includes a 180-day standstill period following a default under the Town's loans. During this period, the Town agrees not to accelerate its loans, initiate foreclosure proceedings, seek appointment of a receiver, or pursue other collection remedies without the senior lender's consent. This provision provides time for resolution of financial issues while protecting the senior lender's collateral position. The agreement also restricts payments to the Town following a senior loan default. Once notified by the senior lender, the Town may not accept payments on its subordinate loans without written authorization.

Additional provisions govern casualty losses, condemnation proceeds, loan modifications, refinancing, bankruptcy actions, and future assignments of the Town's loans. The Town may not modify its loan terms or transfer its loan interests without the senior lender's consent, ensuring consistency within the overall financing structure.

The agreement further clarifies that, in the event of any conflict between the senior loan documents, subordinate loan documents, and this agreement, the provisions of the Subordination and Standstill Agreement control with respect to lien priority, enforcement procedures, notice requirements, and lender rights. Overall, the agreement protects the interests of both lenders while providing a coordinated framework for administering the financing throughout the life of the project.

Financial Impact:
Execution of the agreement does not authorize additional Town expenditures or increase the amount of the Town's financial commitment.

Alignment with Strategic Plan:
The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:

- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:
Staff requests the Town Council review the Subordination and Standstill Agreement for 101 W. Main.

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 – Subordination and Standstill Agreement

Prepared by and after recording
return to:

Winthrop & Weinstine, P.A.
225 S 6th Street, Suite 3500
Minneapolis, MN 55402
Attn: Holly A. Stocker

SUBORDINATION AND STANDSTILL AGREEMENT

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "**Agreement**") is entered into this _____ day of ____________, by and among (i) CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation (together with its successors and/or assigns, the "**Senior Lender**"), (ii) [TOWN OF FRISCO] (the "**Subordinate Lender**"), and (iii) WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership (the "**Borrower**").

Recitals

A. The Borrower owns a multi-family affordable housing development (the "**Project**") located in Frisco, Colorado, on a leasehold estate more particularly described in Exhibit A attached hereto (hereinafter, the leasehold estate is referred to as the "Property").

B. The Senior Lender has agreed to make a permanent loan to Borrower in the original principal amount of $[__________] (the "**Loan**"), pursuant to the terms and conditions set forth in that certain Loan Agreement of even date herewith (the "**Loan Agreement**").

C. The obligation of the Borrower to repay the Loan is evidenced by that certain Term Note of even date herewith, executed by the Borrower payable to the order of the Lender (the "**Senior Note**"), in the original principal amount of $[_______].

D. The Senior Loan is or will be secured by a first mortgage lien (the "**Senior Deed of Trust**") on the Property, executed by the Borrower in favor of the Senior Lender.

E. The Borrower has requested the Senior Lender to permit the Subordinate Lender to make those certain subordinate loans to the Borrower in the amount of i) $[______] (the "**Capital Loan**"), (ii) $[______] (the "**GAP Loan**"), and (iii) $[______] (the "**Land Lease Loan**", and collectively with the Capital Loan and the GAP Loan, the "**Subordinate Loans**") and to secure the Subordinate Loans by, among other things, placing a mortgage lien against the Property.

F. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loans and to place a subordinate mortgage lien against the Property subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loans to the Borrower and to place a subordinate mortgage lien against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"Default Notice" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a Senior Loan Default has occurred under the Senior Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loans. Each Default Notice shall specify the default upon which such Default Notice is based.

"Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"Senior Loan Default" means the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.

"Senior Loan Documents" means the Senior Note, the Loan Agreement, the Senior Mortgage and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Loan.

"Senior Lender" means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the Senior Note, such other Person shall automatically become the Senior Lender.

"Subordinate Deed of Trust" means the [Deed of Trust] encumbering the Property as security for the Subordinate Loans, which the Subordinate Lender will cause to be recorded among the applicable land records immediately before this Agreement.

"Subordinate Lender" means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

"Subordinate Loan Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"Subordinate Loan Documents" means the Subordinate Note, the Subordinate Deed of Trust and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loans.

"Subordinate Note" means the [Promissory Note] of even date herewith issued by the Borrower to the Subordinate Lender, or order, to evidence the Subordinate Loans.

2. Permission to Place Deed of Trust Lien Against Property.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record the Subordinate Deed of Trust and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the Senior Deed of Trust) to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loans. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loans are disbursed to the Borrower. If any of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is not true and correct on both of those dates, the provisions of the Senior Deed of Trust and Senior Loan Documents applicable to unpermitted liens on the Property shall apply.

3. Borrower's and Subordinate Lender's Representations and Warranties.

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

(a) Subordinate Note. The Subordinate Note shall be deemed to contain the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by that certain Term Note (the "Senior Note") in the original principal amount of $[_______] executed by West Main Apartments LLLP, a Colorado limited liability limited partnership (the "Borrower"), payable to Cedar Rapids Bank and Trust Company, an Iowa state-chartered banking corporation (the "Senior Lender"), to the extent and in the manner provided in that certain Subordination and Standstill Agreement dated as of _________, _____, by and among Town of Frisco, the Borrower and the Senior Lender (the "Subordination Agreement"). The Deed of Trust securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Deed of Trust securing the Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Deed of Trust securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender (as defined in the Subordination Agreement) under the Subordination Agreement.

(b) Relationship of Borrower to Subordinate Lender and Senior Lender. The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

(c) Term. The term of the Subordinate Note does not end before 6 months after the term of the Senior Note.

(d) Subordinate Loan Documents. The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents.

(e) Senior Loan Documents. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents.

4. Terms of Subordination.

(a) Agreement to Subordinate. The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Deed of Trust and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Deed of Trust and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Deed of Trust and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Deed of Trust, curing defaults by the Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Deed of Trust, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property).

(b) Subordination of Subrogation Rights. The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Deed of Trust, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Deed of Trust.

(c) Payments Before Senior Loan Default. Until the Subordinate Lender receives a Default Notice of a Senior Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents. Such payments include scheduled principal payments and the Subordinate Lender agrees that the Subordinate Loans do not include any hyper-amortization feature. Such payments include simple, non-compounding, interest. Such payments are payable only from surplus cash flow after the payment of operating expenses, replacement reserve contributions, contributions to escrow accounts, and debt service on the Senior Loan from the operation of the Property.

(d) Payments After Senior Loan Default. The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Deed of Trust) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loans, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Deed of Trust) without the Senior Lender's prior written consent. If the Subordinate Lender receives written notice from the Senior Lender that the Senior Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

(e) Remitting Subordinate Loan Payments to Senior Lender. If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loans. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loans, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loans.

(f) Agreement Not to Commence Bankruptcy Proceeding. The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

5. Default Under Subordinate Loan Documents.

(a) Notice of Default and Cure Rights. The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents to the extent permitted under Section 5(b). All amounts paid by the Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the Senior Deed of Trust.

(b) Subordinate Lender's Agreement to Standstill. If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, for a period of One Hundred and Eighty (180) days, it will not, without the Senior Lender's prior written consent, accelerate the Subordinate Loans, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

(c) Cross Default. The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such Senior Loan Default.

6. Default Under Senior Loan Documents.

(a) Notice of Default and Cure Rights. The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default as provided below. Subordinate Lender may have up to 30 days from the date of the Default Notice to cure any monetary default under the Senior Loan Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to 60 days from the date of the Default Notice to cure a non-monetary default if during such 60-day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 60-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Deed of Trust.

(b) Cross Default. The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the Senior Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior Deed of Trust to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Deed of Trust. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any Senior Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loans shall be retroactively reinstated as if such Senior Loan Default had never occurred.

7. Conflict.

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the Senior Deed of Trust and the Subordinate Deed of Trust, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest. The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Deed of Trust for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the Senior Deed of Trust remains a lien on the Property the following provisions shall apply:

(1) The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the Senior Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

(c) No Modification of Subordinate Loan Documents. The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of the Subordinate Loans, increase the required payments due under the Subordinate Loans, decrease the term of the Subordinate Loans, increase the interest rate on the Subordinate Loans, or otherwise amend the Subordinate Loans terms in a manner that creates an adverse effect upon the Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loans without the Senior Lender's consent shall be void ab initio and of no effect whatsoever and Subordinate Lender agrees that it shall not transfer or assign the Subordinate Loans or the Subordinate Loan Documents without the prior written consent of the Senior Lender.

9. Stabilization, Modification or Refinancing of Senior Loan.

The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) and, in the event of new mortgage debt, Subordinate Lender shall execute and deliver to Senior Lender a new subordination agreement on the same terms and conditions as this Subordination Agreement.

10. Default by the Subordinate Lender or Senior Lender.

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

11. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Cedar Rapids Bank and Trust Company
500 1st Avenue NE, Suite 100
Cedar Rapids, Iowa 52401
Attention: Nick Svare

With a copy to:

Winthrop & Weinstine, P.A.
225 South 6th Street, Suite 3500
Minneapolis, Minnesota 55402
Attention: Holly A. Stocker, Esq.

SUBORDINATE LENDER:

Town of Frisco
Attn: Director of Finance
PO Box 4100
Frisco, Colorado 80443

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

12. General.

(a) Assignment/Successors. This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

(b) No Partnership or Joint Venture. The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent. Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances. The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Deed of Trust is subordinate to the lien, covenants and conditions of the Senior Deed of Trust, or to further evidence the intent of this Agreement.

(e) Amendment. This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located.

(g) Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Deed of Trust; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Deed of Trust, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

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

SENIOR LENDER:

CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation

By: ________________________________
Nick Svare
Vice President

STATE OF IOWA)
)
COUNTY OF LINN)

The foregoing instrument was acknowledged before the this ___ day of ___________, by Nick Svare, a Vice President of Cedar Rapids Bank and Trust Company, an Iowa state-chartered banking corporation, on behalf of said state-chartered banking corporation.

____
Notary Public

SUBORDINATE LENDER:

TOWN OF FRISCO, a Colorado municipality

By: ______________________________
Frederick J. Ihnken
Mayor

STATE OF COLORADO)
)
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before the this ___ day of ____________, 2026, by Frederick J. Ihnken, the Mayor of the Town of Frisco, a Colorado municipality, for and on behalf of said municipality.

____
Notary Public

BORROWER:

WEST MAIN APARTMENTS LLLP, a
Colorado limited liability limited partnership

By: NHPF West Main GP, LLC, a
Colorado limited liability company, its
General Partner

By: The NHP Foundation, a
District of Columbia non-profit
corporation, its Manager

By: ________________________________
Name: ____________________________
Its: ______________________________

STATE OF __________)
)
COUNTY OF _________)

The foregoing instrument was acknowledged before the this ___ day of ____________, 2026, by ____________, the ____________ of The NHP Foundation, a District of Columbia non-profit corporation, the Manager of NHPF West Main GP, LLC, a Colorado limited liability company, the General Partner of West Main Apartments LLLP, a Colorado limited liability limited partnership, for and on behalf of said limited liability limited partnership.

____
Notary Public

<u>EXHIBIT A</u>

LEGAL DESCRIPTION

The “Property” **is a leasehold estate** over certain real property described in that certain Amended and Restated 101 West Main Ground Lease between the Town of Frisco, Colorado and West Main Apartments, LLLP, dated on or about ___,2026(the (“Ground Lease”). The leasehold estate encumbers real property described in the Ground Lease as:

Lot B-1, Amended West Frisco 70, Filing No. 2, according to the plat filed April 16, 1974 under reception no. 140796, County of Summit, State of Colorado, except for that portion of Lot B-1 that has been subdivided as the “Commercial Unit” under that certain subdivision plat recorded in the real property records for the County of Summit, Colorado, on __________,2026, under Reception Number _______

STAFF REPORT

TO:	**MAYOR & TOWN COUNCIL**
FROM:	**THAD RENAULD, TOWN ATTORNEY** **JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER**
RE:	**LANDLORD'S AGREEMENT AND ESTOPPEL BETWEEN THE TOWN OF FRISCO, COLORADO DEPARTMENT OF LOCAL AFFAIRS DIVISION OF HOUSING, AND WEST MAIN APARTMENTS LLLP FOR 101 WEST MAIN**
DATE:	**JUNE 29, 2026**

Summary & Background:

Town staff are bringing forth a Landlord's Agreement and Estoppel for 101 West Main Street, between the Town of Frisco, the Colorado Department of Local Affairs Division of Housing, and West Main Apartments LLLP, for the affordable housing project located at 101 West Main Street for Town Council consideration.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to "preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities." This mission aligns with the Council's strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:

The Town of Frisco has been requested to execute a Landlord's Agreement and Estoppel in connection with a $2,000,000 Housing Development Grant awarded by the Colorado Department of Local Affairs (DOLA), Division of Housing, to support construction of the

101 West Main Apartments affordable housing project. The agreement is between the Town of Frisco, acting as landlord and declarant under the ground lease and planned community declaration, the Colorado Division of Housing, and West Main Apartments LLLP, the project developer and tenant.

The document is a condition of DOLA's grant funding and provides assurances to the State regarding the validity of the ground lease, the Town's compliance with lease obligations, and the continued affordability requirements associated with the project. The agreement also acknowledges that the residential portion of the development will be subject to a Colorado Division of Housing affordability covenant for a 30-year affordability period.

As part of the agreement, the Town agrees that during the affordability period it will not exercise certain remedies under the ground lease without prior written consent from the Colorado Division of Housing. The agreement further provides the State with notice rights and the opportunity to cure certain defaults in order to preserve the affordability restrictions and protect the State's investment in the project.

Financial Impact:
There is no direct fiscal impact associated with execution of the agreement. The agreement does not require the expenditure of Town funds and is intended to facilitate receipt of state grant funding that supports development of the project.

Alignment with Strategic Plan:
The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:

- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:
Staff requests the Town Council review the Landlord's Agreement and Estoppel for 101 W. Main.

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 –Landlord's Agreement and Estoppel

When Recorded Return To:

Colorado Division of Housing
Attention: Brittany Thigpen
1570 Grant Street
Denver, CO 80203

DOH Contract #H6HDG33245

LANDLORD'S AGREEMENT AND ESTOPPEL

THIS LANDLORD'S AGREEMENT AND ESTOPPEL (this "Agreement") is entered into as of ____________________________, 2026 (the "Effective Date") by the Town of Frisco, a Colorado home-rule municipal corporation (together with its successors and assigns, "Landlord"), for the benefit of the State of Colorado, acting by and through the Department of Local Affairs, Division of Housing ("CDOH") (together with its successors and assigns in such capacity, "Grantor"), with the consent of West Main Apartments LLLP, a Colorado limited liability limited partnership, whose address is c/o The NHP Foundation, 1401 H Street, NW, Suite 1000, Washington DC 20005 (together with its permitted successors and assigns, "Tenant").

Recitals

A. Landlord owns the fee simple interest (the "Leased Fee") in the real property described in Exhibit A (the "Land" or the "Property").

B. Landlord and NHPF West Main, LLC, a Colorado limited liability company, and affiliate of Tenant, previously entered into that certain Ground Lease dated August 27, 2025, as amended by that Addendum to 101 West Main Ground Lease dated August 27, 2025, and further amended by that Second Addendum to 101 West Main Ground Lease dated August 27, 2025, and as recorded under that certain Memorandum of Ground Lease on August 28, 2025 in the records of Summit County, State of Colorado, at Reception No. 1358628 (collectively, the "**Original Ground Lease**").

C. Pursuant to that certain Amended and Restated 101 West Main Ground Lease dated ______________, 2026, and recorded on _________________in the records of Summit County, State of Colorado, at Reception No. ____________,a copy of which has been provided to Grantor (the "Lease"), Landlord has leased the Land to Tenant, West Main Apartments LLLP, whose address is c/o The NHP Foundation, 1401 H Street, NW, Suite 1000, Washington, DC 20005 , which includes all rights and interests appurtenant to the Land and all easements, rights, alleys, ways, privileges, appurtenances, and advantages belonging or in any way appertaining to the Land (the "Leasehold Estate") as well as a fee simple interest during the term of the Lease in all buildings, structures, fixtures, and other improvements currently or hereafter located on the Land and all alterations thereto (which may include individual air space units and an undivided interest in common elements and limited common elements, as appropriate) (the "Improvements" and, together with the Leasehold Estate, the "Premises").

D. Landlord is also the declarant ("Declarant") under that certain Declaration for 101 W. Main Small Planned Community, dated _____________ and recorded _____________ in the records of Summit County, State of Colorado, at Reception No. _______________(the "SPC Declaration"), pursuant to which Landlord and Declarant will subject the Premises to a common interest community regime under the Colorado Common Interest Ownership Act, specifically, a small planned community, on the Leasehold Estate, to facilitate the Tenant's development and operation of an affordable rental housing 52-unit multifamily building known as 101 W. Main Apartments (the "Project"). The Project will result in affordable housing and commercial space constructed in a single building on the Premises (the "Building"). The Building will be subdivided into two separate, small planned community primary units developed for separate ownership (each such unit a "**Unit**" and, together, the "**Units**"), and certain common elements comprising residual Building and Premises elements that are not part of the Units (the "**Common Elements**") to be owned (under a long-term leasehold) by the Association (as hereinafter defined), all which shall be governed by the Declaration, as described in the SPC Declaration.

E. The Units shall be comprised of (i) a portion of the Building consisting of 52 residential rental Apartments for individuals and families who are qualified under low-income housing tax credit ("**LIHTC**") program rules, to be financed by, among other sources, tax credit equity from an allocation of low-income housing tax credits (the "**Housing Unit**"); and (ii) a ground-level portion of the Building consisting of floor space to be used for a commercial space, to be financed by, among other sources, tax-exempt bond financing and tax credit equity from an allocation of low-income housing tax credits (the "**Commercial Unit**"). This Agreement encumbers only the Housing Unit.

F. Landlord and Tenant have agreed to enter into the Lease to further the goal of providing affordable rental housing to extremely low- and low-income persons, as provided in the Lease (the "Lease Purpose"). Tenant has agreed to construct the Project on the Premises.

G. CDOH has provided NHP Foundation, a District of Columbia nonprofit corporation ("Grantee"), with a Housing Development Grant ("HDG") grant (the "Grant") in the amount of $2,000,000.00 (the "Grant Funds") to assist with construction of the Project. The Grantee has loaned or will loan the Grant Funds to Tenant to develop the Project.

H. Tenant has granted or will grant to Grantor an encumbrance on its leasehold interest in and to the Premises by virtue of a Colorado Department of Local Affairs Use Covenant and Regulatory Agreement dated ________________, 2026 (the "CDOH Covenant"), to be recorded in the real property records of Summit County, State of Colorado. The Landlord, as Landlord under the Lease and as Declarant under the SPC Declaration, is not a party to the CDOH Covenant.

I. As additional security for the Grant and to induce Grantor to make the Grant to Grantee, which in turn will facilitate realization of the Lease Purpose, the Landlord, Declarant, and Tenant have agreed to confirm certain rights of Grantor in and to the Premises and the Lease, and Declaration, as set forth herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lease. To the extent of any inconsistency between the terms of this Agreement and the terms of the Lease or the Declaration, the terms of this Agreement shall control.

Agreement

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein, and for other consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord acknowledges and agrees as follows:

1. As a condition precedent to CDOH's disbursement of the Grant Funds, Landlord, Declarant, and Tenant have agreed to, subsequent to execution and recordation of the Lease and SPC Declaration, record this Landowner's Agreement and Estoppel in the official records of the office of the Clerk and Recorder of the county in which the Property is located.

2. Landlord represents and warrants as follows: (a) that it is the owner of the Leased Fee, (b) that except for the liens and encumbrances of record as of the date hereof, there is no other lease, security interest, mortgage, charge, pledge, lien, encumbrance, claim, assignment, right of possession or detention, declaration, restrictions, covenants, or other agreement or arrangement having the effect of creating a security interest (each, a "Lien") encumbering Landlord's fee interest in the Premises; (c) that the Lease is valid, binding and in full force and effect and has not been modified, amended, supplemented or superseded in any manner whatsoever; (d) that Tenant has performed all of its obligations under the Lease and there are no uncured events of default which with the passage of time or the giving of notice, or both, would constitute a default by Tenant under the Lease; (e) that there are no uncured defaults on the part of Landlord under the Lease and no events have occurred which with the passage of time or the giving of notice, or both, would constitute a default by Landlord under the Lease; and (f) there are no actions, voluntary or otherwise, pending against Landlord under any bankruptcy laws.

3. As set forth in the Lease, the term of the Lease commences on the Commencement Date and continues until the ninety-ninth (99th) anniversary of the Commencement Date, unless such termination is advanced or postponed pursuant to the Lease, written agreement of the parties, or operation of law.

4. Landlord, Declarant, and Tenant acknowledge that all of the residential rental units in the Project will be subject to and benefited by the terms and conditions of that certain CDOH Covenant to be executed by Tenant and the Grantor, which is intended to create a covenant running with the Leasehold Estate and encumbering and benefitting the Improvements for its term. As with the CHFA Land Use Restriction Agreement addressed in Section 5.3(a) and (b) of the Lease, Landlord and Declarant acknowledge and agree that for so long as the CDOH Covenant is in effect, the restrictions set forth therein shall be binding upon the Landlord, in its role as lessor, and Tenant, in its role as lessee, and Declarant, in its role as declarant, and each of their respective successors and assigns.

5. At any time during the period between the date hereof and the date of expiration of the 30-year Affordability Period set forth in Section 3 of the CDOH Covenant, Landlord shall not exercise any of its remedies under the Lease without the prior written consent of CDOH.

6. In the event of a foreclosure of the Property by the Association under the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101 et seq.), the State shall have the right but not the obligation to cure such foreclosure in its sole discretion.

7. For purposes of providing notice under the Lease, the addresses of the parties shall, until changed as provided in the Lease, be as follows:

If to Grantor, at: Colorado Division of Housing
Attn: Asset Management
1570 Grant Street
Denver, CO 80203

If to Tenant, at: West Main Apartments LLLP
c/o The NHP Foundation
1401 H Street, NW, Suite 1000
Washington, DC 20005
Attn: John Welsh, Senior Vice President

If to Landlord, at: Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Town Manager

8. This Agreement shall bind and benefit the parties, their successors and assigns.

9. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the laws of the State of Colorado. All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado. Exclusive venue shall be in the City and County of Denver, except as otherwise required by Colorado law.

10. This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by the parties hereto, except that this Agreement shall automatically terminate upon Grantor's release of the CDOH Covenant.

11. Landlord, Declarant, and Tenant represent to Grantor that they have full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

12. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

13. The State of Colorado, CDOH, shall not be required to indemnify, name as additional insured, or cover any other party under its insurance; and the State of Colorado cannot waive any and all claims and causes of action against the other parties to the extent covered by insurance.

14. The State of Colorado, CDOH, shall not be obligated at any time, or be bound by any provisions hereto which may be prohibited under Colorado State law, policy or Fiscal Rules, including but not limited to requirements that the State obligate funds without an encumbrance,

enter into arbitration, or indemnify any other party. In particular, notice of Colorado Revised Statutes §24-106-109 is hereby given.

(Signature Page Follows)

Landlord has caused this Landlord's Agreement and Estoppel to be executed as of the date first above written.

LANDLORD and DECLARANT:

Town of Frisco, a Colorado home-rule municipal corporation

By:

____

Frederick J. Ihnken, Mayor

Date:____

State of)
) ss.
County of)

The foregoing instrument was subscribed to and acknowledged before me this _____ day of ____, 202_, by Frederick J. Ihnken as Mayor of the Town of Frisco.

Witness my hand and official seal

____

GRANTOR:

State of Colorado, by and through the Department of Local Affairs for the benefit of the Division of Housing

By: ________________________________
Maria De Cambra, Executive Director,
Department of Local Affairs

State of Colorado)
) ss.
City and County of Denver)

The foregoing instrument was acknowledged before me this ___ day of _____________, 202_ by _________________, as _______________ of the Colorado Department of Local Affairs.

Dated:_______________________

Witness my hand and official seal.

Notary Public

Tenant agrees to and acknowledges execution of this Landlord's Agreement and Estoppel.

TENANT

West Main Apartments LLLP, a Colorado limited liability limited partnership

By: The NHP Foundation, a District of Columbia nonprofit corporation
Its: General Partner

By: ____________________________________
John M. Welsh, Senior Vice President

Date: ____________________________________

State of)
) ss.
County of)

The foregoing instrument was subscribed to and acknowledged before me this _____ day of ____________________________________, 202_, by John M. Welsh, as Senior Vice President of The NHP Foundation, a District of Columbia nonprofit corporation, as General Partner of West Main Apartments LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal

____

EXHIBIT A

Legal Description of the Premises

HOUSING UNIT, 101 WEST MAIN SMALL PLANNED COMMUNITY, ACCORDING TO THE PLANNED COMMUNITY DECLARATION RECORDED _____________, 2026 IN THE OFFICE OF THE CLERK AND RECORDER OF SUMMIT COUNTY, COLORADO, AT RECEPTION NO. _____________, AND THE PLANNED COMMUNITY MAP FOR 101 WEST MAIN SMALL PLANNED COMMUNITY RECORDED ______________, 2026 IN SUCH OFFICE AT RECEPTION NO. ______________, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME AS PERMITTED UNDER SUCH DECLARATION.

STAFF REPORT

TO: MAYOR & TOWN COUNCIL

FROM: THAD RENAULD, TOWN ATTORNEY
JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER

RE: 2ND AMENDED AND RESTATED LOAN AGREEMENT, 2ND AMENDED & RESTATED PROMISSORY NOTE, AND 2ND AMENDED & RESTATED LEASEHOLD DEED OF TRUST FOR 101 WEST MAIN

DATE: JUNE 29, 2026

Summary & Background:

Town staff are bringing forth a Second Amended & Restated Loan Agreement for 101 West Main Street, between the Town of Frisco, West Main Apartments LLLP, and NHPF West Main LLC, for the affordable housing project located at 101 West Main Street for Town Council consideration.

The Town of Frisco has been requested to approve a 2nd Amended and Restated Loan Agreement associated with the 101 West Main Apartments affordable housing project. The proposed agreement restates and replaces the original Loan Agreement executed in 2023 and the Amended and Restated Loan Agreement executed in 2025. The agreement transfers all borrower rights and obligations from NHPF West Main, LLC to West Main Apartments LLLP, the limited partnership entity that will own and operate the affordable housing project following the Low-Income Housing Tax Credit (LIHTC) closing and associated financing transactions.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to “preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities.” This mission aligns with the Council’s strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:
The proposed loan agreement & promissory note accomplishes two primary purposes. First, it transfers the Town's existing loan relationship from NHPF West Main, LLC to West Main Apartments, LLLP. The agreement states that West Main Apartments, LLLP assumes all borrower obligations under the loan documents and that the Town recognizes the partnership as the successor borrower.

Second, the agreement restates the Town's loan commitment from $2.5 million to $4.9 million. The increase reflects and combines prior Council approved commitments from the Town within one loan document. The Town investment remains secured through amended loan documents, including a promissory note, deed of trust, environmental indemnity agreement, guaranty, and collateral assignment of partnership interests.

The agreement contains extensive borrower representations and covenants designed to protect the Town's interests. These provisions require the borrower to maintain ownership and operation of the property as affordable housing, comply with all affordability restrictions, maintain insurance, provide ongoing financial reporting, maintain the property in compliance with applicable laws, and preserve the Town's security interests. The borrower is further restricted from transferring ownership interests, incurring additional indebtedness, encumbering the property, or altering the project's affordable housing purpose without Town approval, subject to exceptions necessary for LIHTC financing.

The agreement also establishes clear default and enforcement provisions. Events of default include payment defaults, violations of loan covenants, violations of the Development Agreement or affordability restrictions, insolvency events, and other material breaches. Prior to exercising remedies, the Town must provide notice and an opportunity to cure. The agreement further allows members and investors of the ownership entity to cure defaults on behalf of the borrower.

The Deed of Trust grants the Town a security interest in:
- The borrower's leasehold interest in the project property.
- All existing and future improvements located on the property.
- Personal property, fixtures, equipment, and building systems associated with the project.
- Project revenues, rents, leases, accounts, permits, contracts, and other intangible assets associated with ownership and operation of the development.

The document also assigns rents and lease revenues to the Town as additional security in the event of a default.

Under the agreement, the borrower is required to: make all loan payments when due, maintain the property in good condition and compliance with applicable laws, maintain casualty and liability insurance acceptable to the Town, keep the property free of unauthorized liens and encumbrances, provide financial information upon request, maintain appropriate management of the property, and preserve the affordable housing project and associated improvements.

Financial Impact:
The Town of Frisco previously committed $2.5 million to the project through land purchasing assistance. An additional $2.4 million has been authorized for project gap financing assistance, totaling $4.9 million.

Alignment with Strategic Plan:
The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:
- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:
Staff requests the Town Council review the 2nd Amended and Restated Loan Agreement, 2nd Amended & Restated Promissory Note, and 2nd Amended & Restated Leasehold Deed of Trust.

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 – 2nd Amended and Restated Loan Agreement
- Attachment 2 – 2nd Amended & Restated Promissory Note
- Attachment 3 – 2nd Amended & Restated Leasehold Deed of Trust

After recording, return to:
Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Town Manager

2nd AMENDED AND RESTATED LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, FINANCING STATEMENT AND ASSIGNMENT OF RENTS AND LEASES

THIS SECOND AMENDED AND RESTATED LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, FINANCING STATEMENT, AND ASSIGNMENT OF RENTS AND LEASES (this "Deed of Trust") is given as of July _____, 2026, by

WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership ("Borrower"), to the **PUBLIC TRUSTEE FOR THE CITY AND COUNTY OF SUMMIT, STATE OF COLORADO** (the "Public Trustee"), for the use and benefit of **the TOWN OF FRISCO**, a Colorado home rule municipal corporation ("Lender").

RECITALS

A. NHPF West Main, LLC, a Colorado limited liability company (the "Company"), and affiliate of Borrower, and Lender entered into that original Deed of Trust, Security Agreement, Financing Statement, and Assignment of Rents and Leases dated June 16, 2023, as amended and restated by that certain Amended and Restated Leasehold Deed of Trust Security Agreement, Financing Statement and Assignment of Rents and Leases dated August 27, 2025 (the "Original Deed of Trust"), and this Deed of Trust is made by Borrower, as assignee of the Company, and Lender to restate and replace the Original Deed of Trust in its entirety and supersedes the terms and conditions under the Original Deed of Trust.

B. Borrower has requested that Lender provide subordinate financing to assist in the development of the Real Property (as defined hereunder) in the Town of Frisco, Colorado including all the improvements located thereon (the "Improvements"), to provide fifty-two (52) units of affordable housing and commercial space, and ancillary amenities thereto.

C. Lender has determined to assist in the financing of the development of the Real Property and the Improvements (together, the "Project") by loaning to Borrower the original principal amount of Four Million Nine Hundred Thousand and 00/100 Dollars ($4,900,000.00) (the "Loan"), upon the terms and conditions of that certain 2nd Amended and Restated Loan Agreement dated even herewith by and between the Company, Borrower and Lender (the "Loan Agreement") assigning all of the Company's rights and interests as borrower to the Borrower, that certain 2nd Amended and Restated Promissory Note dated even herewith by Borrower payable to the order of Lender, together with all renewals, extensions, and modifications of the same (the "Note"), that certain Environmental Indemnity Agreement dated June 16, 2023 by the Company and The NHP Foundation, a District of Columbia nonprofit corporation (the "Sponsor") for the benefit Lender (the "Environmental Indemnity,") and that certain Unconditional Guaranty dated June 16, 2023 by Sponsor to Lender (the "Guaranty," and together with this Deed of Trust, the Loan Agreement, the Note, and the Environmental Indemnity, the "Loan Documents"). The principal balance, together with accrued interest and all other amounts due on the Loan, shall be due and payable in full on the Maturity Date set forth in the Note.

ARTICLE 1.
PARTIES, PROPERTY, AND DEFINITIONS

The following terms and references shall have the meanings indicated:

1.1 Real Property: The leasehold interest in the real property described in Exhibit A, attached hereto and by this reference incorporated herein, together with all leasehold right, title and interest of Borrower in the following with respect to the real property, whether now owned or hereafter acquired by Borrower:

(a) all improvements now or hereafter located on such real property and all easements and appurtenances thereto;

(b) the land lying within any street or roadway adjoining the real property; any vacated or hereafter vacated street or alley adjoining the real property; and any strips and gores adjoining the real property;

(c) all and singular the passages, waters, water rights (whether tributary or non-tributary or not non-tributary), water courses, riparian rights, wells, well permits, water stock, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to the real property, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license, and the reversion and reversions and remainder and remainders thereof; and

(d) excepting the personal property of any tenants and residents, all machinery, apparatus, equipment, fittings, fixtures (whether actually or constructively attached or incorporated, and including all trade, domestic, and ornamental fixtures) now or hereafter located in, upon, or under such real property or improvements and used or usable in connection with any present or future operation thereof, including but not limited to all lighting, utility, and power equipment; engines; pipes; pumps; tanks; motors; conduits; utility systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, signage, heating, air-conditioning; communication apparatus; water heaters; ranges; furnaces; appliances, refrigerators, stoves; shades, awnings, screens, storm doors and windows; attached cabinets; rugs, carpets and draperies and all additions thereto and replacements therefor.

1.2 Chattels: All goods, trade fixtures, fixtures, inventory, furnishings, fittings, machinery, apparatus, equipment, building and other construction materials, supplies, and other tangible personal property of every nature now owned or hereafter acquired by Borrower and used, intended for use, or reasonably required in the development, construction, reconstruction, alteration, repair, or operation of the Property and any improvements or infrastructure located thereon, together with all accessions thereto, replacements and substitutions therefor, and proceeds thereof, including, without limitation, to the extent not deemed to be real property under this Deed of Trust, all apparatus, machinery, motors, elevators, fittings, equipment, and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures, lawn or deck chairs, towels, maintenance equipment, and recreational and fitness equipment.

1.3 Intangible Personalty: All right, title and interest of the Borrower in and to the following, with respect to the Real Property:

(a) all of the rents, royalties, income (including, without limitation, operating income), receipts, revenues, issues, and profits of and from the use, operation, or enjoyment of such real property and improvements (collectively, the "Income"), whether such Income is attributable to the period, or is collected, prior to or subsequent to any default by Borrower;

(b) all plans and specifications for the improvements on the real property; soil, environmental, engineering, land planning maps, surveys and other studies and reports concerning the real property or prepared for the orderly planning and development of the real property, including all plans, drawings and studies concerning the platting or replatting of the real property; all contracts and subcontracts relating to the improvements on the real property, or any thereof;

(c) all awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, casualty or injury to, or decrease in the value of, any of such real property, including without limitation all property insurance payments, proceeds and policies related to such real property;

(d) all of the licenses, permits, franchises, and other entitlements to use and all rights thereto which have been issued by or which are pending before any governmental or quasi-governmental agency which are necessary or appropriate for the Property;

(e) all funds, accounts, operating accounts, accounts receivable, deposit accounts, escrow accounts, monies, claims, causes of action, rights to payment, prepaid insurance and other prepaid items, contracts, contract rights, refunds and rebates, maintenance contracts, maintenance warranties, continuing agreements, security deposits, general intangibles and payment intangibles associated with the property, letter of credit rights and insurance proceeds;

(f) all water taps, sewer taps, building permits, curb cut permits, storm water discharge permits, refunds, rebates or deposits due or to become due from any utility companies or governmental entity;

(g) the absolute right to Borrower's interest in any trade name used by Borrower in connection with the Property and all of Borrower's rights in and to contract rights, leases, concessions, trade names, trademarks, service marks, logos, operating systems, trade secrets, technology and technical information, copyrights, warranties, licenses, plans, drawings and other items of intangible personal property relating to the ownership or operation of the Property; and

(h) all other and greater rights and interests of every nature in such property and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Borrower.

1.4 Property: The Real Property, the Chattels and the Intangible Personalty are sometimes collectively called the "Property." It is specifically understood that the enumeration of any specific articles of the Property, including Chattels and Intangible Personalty shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the Real Property, Chattels and Intangible Personalty, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood and agreed and declared to be appropriated to the use of the real estate, and shall for the purposes of this Deed of Trust be deemed to be real estate and conveyed and mortgaged hereby.

1.5 Secured Obligations: The Property is granted and shall be held for the purpose of securing the following (the "Secured Obligations"):

(a) The payment of the indebtedness as evidenced in the Loan Agreement and Note;

(b) The performance and observance of all terms, covenants, conditions, and provisions to be performed or observed by the Borrower pursuant to the terms of this Deed of Trust, and UCC-1 financing statements required to perfect Lender's security interest in the personal property as granted by this Deed of Trust (the "Financing Statement").

ARTICLE 2.
GRANTING CLAUSE

2.1 Grant to Public Trustee. As security for the Secured Obligations, Borrower hereby grants, bargains, sells, and conveys the Property to Public Trustee, in trust forever, with power of sale, for the use and benefit of Lender, and subject to all provisions hereof.

2.2 Security Interest to Lender. As additional security for the Secured Obligations, Borrower hereby grants to Lender a security interest in the Chattels and in the Intangible Personalty and in such of the Real Property as may be deemed personalty (collectively, the "Collateral"). To the extent any of the Collateral may be or has been acquired with funds advanced by Lender under the Loan Documents, this security interest is a purchase money security interest. This Deed of Trust constitutes a Security Agreement under the Uniform Commercial Code of Colorado (the "Code") with respect to any part of the Property and Collateral that may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate; all of the terms, provisions, conditions and agreements contained in this Deed of Trust pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property, and the following provisions of this section shall not limit the generality or applicability of any other provision of this Deed of Trust but shall be in addition thereto:

(a) The Collateral shall be used by Borrower solely for business purposes, being installed upon or owned in connection with the real estate comprising part of the Property for Borrower's own use or as the equipment and furnishings furnished by Borrower, as owner, to tenants of the Property;

(b) The Chattels shall be kept at the real estate comprising a part of the Property, and shall not be removed therefrom without the consent of Lender and the Chattels may be affixed to such real estate but shall not be affixed to any other real estate;

(c) Except for any financing statement evidencing a Permitted Exception (as defined in Paragraph 3.1 hereunder), no financing statement covering any of the Collateral or any proceeds thereof is on file in any public office; and Borrower will, at its cost and expense, upon demand, furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts and things as Lender may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Secured Obligations, subject to no adverse liens or encumbrances; and Borrower will pay the cost of filing the same or filing or recording such financing statements or other documents and this instrument in all public offices wherever filing or recording is deemed by Lender to be necessary or desirable;

(d) The terms and provisions contained in this section and in Section 7.6 (Enforcement of Security Interests) of this Deed of Trust shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code; and

(e) This Deed of Trust constitutes a security agreement and financing statement under the Code with respect to the Collateral. As such, this Deed of Trust covers all items of the Collateral that are personal property including all items which are to become fixtures. Borrower is the "Debtor" and Lender is the "Secured Party" (as those terms are defined and used in the Code) insofar as this Deed of Trust constitutes a financing statement.

(f) The Borrower agrees that Lender may, to the extent permitted by applicable law, prepare and file financing statements, amendments thereto, and continuation statements without the signature of the Borrower and file any financing statement, amendment thereto or continuation statement electronically.

ARTICLE 3.
BORROWER'S TITLE AND AUTHORITY

3.1 Borrower's Interest. Borrower, for itself, its successors and assigns, represents and warrants to Lender, its successors and assigns, that it is lawfully seized of the Property and has good right to sell and convey the same, that the Property is free from all encumbrances except only the lien of general taxes for the year 2026, a lien not yet due and payable, and those additional matters listed on the attached Exhibit B ("Permitted Exceptions"), and that the Lender, its successors and assigns, shall quietly enjoy and possess the Property. Borrower, for itself, its successors and assigns, represents and warrants to Lender, and its successors and assigns, that Borrower is the owner of the Collateral, free of any liens, encumbrances, security interests, and other claims whatsoever, other than the Permitted Exceptions. Borrower, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular, all of the Property, Collateral and property interest granted and conveyed in trust pursuant to this Deed of Trust, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof, subject to the Permitted Exceptions. The warranties contained in this section shall survive foreclosure of this Deed of Trust, and shall inure to the benefit of and be enforceable by any person who may acquire Borrower's interest to the Property or the Collateral pursuant to any such foreclosure.

3.2 Waiver of Homestead and Other Exemptions. To the extent permitted by law, Borrower hereby waives all rights to any homestead or other exemption to which Borrower would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law.

3.3 Due Authorization. Borrower represents and warrants to Lender that that the execution of this Deed of Trust has been duly authorized by all necessary limited liability company action on the part of Borrower.

ARTICLE 4.
BORROWER'S AFFIRMATIVE COVENANTS

4.1 Payment of Note. Borrower will pay all principal, interest, and other sums payable under the Note, this Deed of Trust, or the Loan Documents, on the date when such payments are due, without notice or demand.

4.2 Performance of Other Obligations. Borrower will promptly and strictly perform and comply with all other covenants, conditions, and prohibitions required of Borrower by the terms of the Loan Documents.

4.3 Other Encumbrances. Borrower will promptly and strictly perform and comply with all covenants, conditions, and prohibitions required of Borrower in connection with any other encumbrance affecting the Property or the Collateral, or any part thereof, or any interest therein, regardless of whether such other encumbrance is superior or subordinate to the lien hereof. This paragraph does not authorize any lien or encumbrance against the Property or the Collateral except as permitted by Section 3.1 or with the prior written consent of Lender as provided in this Deed of Trust.

4.4 Payment of Taxes.

(a) Property Taxes. The Borrower shall pay all property taxes and assessments on or before the date due.

(b) Intangible Taxes. If by reason of any statutory or constitutional amendment or judicial decision adopted or rendered after the date hereof, any tax, assessment, or similar charge is imposed against the Note, against Lender arising directly from Lender's interests in the Loan Documents (other than a tax based on Lender's income), or against any security interest of Lender in the Property, Borrower will pay such tax, assessment, or other charge before delinquency and will indemnify Lender against all loss, expense, or diminution of income in connection therewith. In the event Borrower is unable to do so, either for economic reasons or because the legal provisions or decisions creating such tax, assessment or charge forbid Borrower from doing so, then the Note will, at Lender's option, become due and payable in full upon thirty (30) days' notice to Borrower.

(c) Right to Contest. Notwithstanding any other provision of this section, Borrower will not be deemed to be in default solely by reason of Borrower's failure to pay any impositions so long as, in Lender's judgment, each of the following conditions is satisfied:

(i) Borrower is engaged in and diligently pursuing in good faith administrative or judicial proceedings appropriate to contest the validity or amount of such impositions; and

(ii) Nonpayment of such impositions will not result in the loss or forfeiture of any Property encumbered hereby or any interest of Lender therein.

If Lender determines that any one or more of such conditions is not satisfied or is no longer satisfied, Borrower will pay the impositions in question, together with any interest and penalties thereon, within ten (10) days after Lender gives notice of such determination.

4.5 Maintenance of Insurance.

(a) Policies. Borrower shall obtain and maintain the following insurance and pay all related premiums as they become due:

(i) Casualty. Insurance of the Project against damage or loss by fire, lightning, and other perils, on an all-risks basis, such coverage to be in an amount satisfactory to Lender.

(ii) Liability. Combined commercial general liability insurance protecting Borrower and Lender against loss or losses from liability imposed by law or assumed in any agreement, document, or instrument and arising from bodily injury, death, or property damage with a limit of liability satisfactory to Lender per occurrence and general aggregate. Also, "umbrella" excess liability insurance in an amount satisfactory to Lender.

(iii) Additional Insurance. Borrower shall obtain and maintain such other policies of insurance as Lender may reasonably request in writing and which is commercially customary for similar projects.

4.6 Maintenance and Repair of Property and Collateral. Borrower will at all times maintain the Property and the Collateral in good condition and repair, and will diligently prosecute the completion of any infrastructure, building or other improvement which is at any time in the process of construction on the Property in full compliance with all building codes and other governmental requirements. Borrower shall constantly maintain and shall not diminish in any respect nor materially alter the Property during the term of this Deed of Trust. Subject to the rights of any lender under a superior deed of trust, Borrower will promptly repair, restore, replace, or rebuild any part of the Property or the Collateral which may be affected by any casualty or any public or private taking or injury to the Property or the Collateral. Any repair, restoration, replacement, or rebuilding shall be consistent with all applicable laws and regulations. All costs and expenses arising out of the foregoing shall be paid by Borrower whether or not the proceeds of any insurance or eminent domain shall be sufficient therefor. Borrower will comply with all statutes, ordinances, and other governmental or quasi-governmental requirements and private covenants relating to the ownership, construction, use, or operation of the Property and the Collateral, including but not limited to any environmental or ecological requirements, legislation or regulations with respect to the Americans with Disabilities Act; provided, that so long as Borrower is not otherwise in default hereunder, Borrower may, upon providing Lender with security reasonably satisfactory to Lender, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, or requirement. Lender and any person authorized by Lender may enter and inspect the Property at all reasonable times, and may inspect the Collateral, wherever located, at all reasonable times.

4.7 Management. The Borrower will provide and maintain good and efficient management of the Property satisfactory to Lender. Borrower shall obtain Lender's advance written approval of any management provided, and of any contract therefor or assignment thereof, which written approval shall not be unreasonably withheld.

4.8 Condemnation. Borrower hereby assigns, transfers and sets over unto Lender the entire proceeds of any award or any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation subject to the rights of any lender under a superior deed of trust.

4.9 Mechanics' Liens. Borrower will keep the Property free and clear of all liens and claims of liens by contractors, subcontractors, mechanics, laborers, material men, and other such persons.

4.10 Defense of Actions. Borrower will defend, at Borrower's expense, any action, proceeding or claim which affects any Property encumbered hereby or any interest of Lender in such Property or in the Secured Obligations, and will indemnify and hold Lender harmless from all loss, damage, cost, or expense, including reasonable attorneys' fees, which Lender may incur in connection therewith except to the extent such loss is caused by Lender's gross negligence.

4.11 Inventories; Assembly of Chattels. Borrower will, from time to time at the request of Lender, supply Lender with a current inventory of the Chattels, in such detail as Lender may require. Upon the occurrence of any Event of Default hereunder, Borrower will, at Lender's request assemble the Chattels and make the Chattels available to Lender at any place designated by Lender which is reasonably convenient to both parties.

4.12 Further Assurances; Estoppel Certificates. Borrower will execute and deliver to Lender upon demand, and pay the costs of preparation and recording thereof, any further documents which Lender may request to confirm or perfect the liens and security interests created or intended to be created hereby, or to confirm or perfect any evidence of the Secured Obligations. Borrower will also, within ten (10) days after any request by Lender, deliver to Lender a signed and acknowledged statement certifying to Lender, or to any proposed transferee of the Secured Obligations, (a) the balance of principal, interest, and other sums then outstanding under the Note, and (b) whether Borrower claims to have any offsets or defenses with respect to the Secured Obligations and, if so, the nature of such offsets or defenses.

4.13 Parking Requirements. Borrower shall maintain at all times sufficient parking spaces to comply with the parking requirements of all leases, zoning and other regulations affecting the Property.

4.14 Financial Statements and Inspection of Records. Borrower will furnish or cause to be furnished to Lender copies of such certified reports, financial statements, supporting schedules and other financial data as Lender may reasonably require covering the financial condition of Borrower, in form and content satisfactory to Lender.

4.15 Insurance Proceeds. Insurance proceeds from casualty and condemnation shall be used to restore and rebuild the Property so long as Borrower is not in default.

ARTICLE 5.
BORROWER'S NEGATIVE COVENANTS

5.1 Disposition of Property, Leases or Beneficial Interest in Borrower. It is expressly acknowledged, covenanted and agreed that, except with Lender's prior written consent and as otherwise set forth in the Ground Lease, there may be no sale, lease (except for leases of space in the improvements on the Property made by Borrower in the ordinary course of Borrower's business), exchange, assignment, conveyance, encumbrance, mortgage, alienation, transfer or other disposition (herein collectively called a "Disposition") of (a) all or any portion of the Property or any lease thereof (or any interest therein) which gives the lessee any option to purchase the Property or any part thereof, or (b) all or any part of the legal or beneficial ownership interest or management control in Borrower. However, any transaction defined as a "Permitted Transfer" in Section 4(h) of the Loan Agreement shall not require the Lender's consent or otherwise be limited by or constitute a violation of the foregoing provisions. In the event there occurs a Disposition without Lender's written consent, with the exception of Permitted Transfers, then Lender may, at Lender's option, accelerate the maturity of the Note and enforce any and all of Lender's rights, remedies and resources set forth in this Deed of Trust or the Loan Documents upon the occurrence of an Event of Default. Lender's failure to exercise its remedies hereunder for a disapproved Disposition shall not be construed as a waiver of Lender's right to subsequently exercise such remedies, and Lender's approval of a Disposition shall not be construed as a waiver of the provisions hereof with respect to any subsequent Disposition. The rights and options herein granted to Lender may be exercised at Lender's sole option and discretion, need not be based upon an increased business risk or any other risk, and are an integral and valuable part of the security given to Lender.

5.2 Further Encumbrance of Property. Except for the Permitted Exceptions, Borrower will not create, place or permit to be created or placed or allow to remain against the Property any lien, mortgage or deed of trust, regardless of whether the same is expressly subordinate to the liens and security interests imposed hereby or by any other instruments securing the Secured Obligations and Borrower shall not encumber the Property without the prior consent of Lender.

5.3 Transfer or Removal of Chattels. Borrower will not sell, transfer or remove from the Property all or any material part of the Chattels, unless the items sold, transferred, or removed are simultaneously replaced with similar items of equal or greater value.

5.4 Further Encumbrance of Collateral. Borrower will not create or permit any junior lien, security interest or other encumbrance against the Collateral without the prior written consent of Lender.

5.5 Change in Name, Location of Collateral, Etc. Without giving at least thirty (30) days' prior written notice to Lender, the Borrower shall not: (a) change its name, identity structure, or jurisdiction of organization; (b) change the location of its place of business (or chief executive office if more than one place of business); or (c) add to or change any location at which any of the Collateral is stored, held or located, without first notifying Lender of Borrower's intention to do so and shall execute and deliver to Lender modifications or supplements of this Deed of Trust (and to any financing statement which may be filed in connection herewith) as Lender may require.

5.6 Improper Use of Property or Collateral. Borrower will not use the Property or the Collateral for any purpose or in any manner, or take any action with respect to the Property which violates any applicable law, ordinance, or other governmental requirement, the requirements or conditions of any insurance policy, or any private covenant.

ARTICLE 6.
EVENTS OF DEFAULT

Each of the following events will constitute a default (an "Event of Default") under this Deed of Trust and under each of the other Loan Documents if not cured within any applicable cure period provided hereunder or thereunder:

6.1 Failure to Pay. Default shall be made in the payment of any installment of principal or interest on the Note or any other sum any of the Loan Documents when due (after giving consideration to any grace period which may be applicable under such document).

6.2 Breach of Material Terms. The Borrower shall fail to duly perform or observe any of the covenants, agreements, or terms contained in the Loan Agreement, the Note, the other Loan Documents, or in this Deed of Trust and such failure shall continue for more than 30 days after Lender's delivery of written notice thereof to the Borrower.

6.3 Conveyance. The Borrower shall sell or convey the Property or any interest therein, except for a Permitted Transfer or as otherwise permitted under the Loan Documents.

6.4 Bankruptcy / Insolvency. The Borrower shall be generally unable to pay its debts as they become due, or shall make an assignment for the benefit of creditors; or the Borrower shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such a receiver, trustee or similar officer shall be appointed without the application or consent of the Borrower, and such appointment shall continue undischarged for a period of ninety (90) days; or the Borrower shall institute (by petition, application, answer or otherwise) any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution, liquidation or similar proceedings under the laws of any jurisdiction; or any such proceeding shall be instituted against the Borrower; or the Borrower shall terminate or dissolve.

6.5 Representations. Any representation of the Borrower made herein or made by the Borrower in any submission or document delivered by or on behalf of the Borrower in connection with the Indebtedness shall prove to be materially untrue, or a default or an "Event of Default," however defined, shall occur under any other document or instrument now or hereafter securing repayment of the Note or issued in connection therewith, or evidencing or securing a loan made by any other lender with regard to the Property.

6.6 Superior Lien Against the Property. Other than with respect to the loans listed as Permitted Exceptions, the assertion of any claim of priority over this Deed of Trust, by title, lien, or otherwise in any legal, administrative, or equitable proceeding, unless such assertion be withdrawn, or effective action satisfactory to Lender commenced (and thereafter diligently prosecuted) and Lender is secured against any loss or damage therefrom, within thirty (30) days of the assertion of such claim.

6.7 Abandonment. The actual or constructive abandonment of all or a substantial portion of the Property or the Collateral (such abandonment constituting an assignment to Lender, at Lender's option, of Borrower's interest in any lease or contract now or hereafter affecting the abandoned property).

6.8 Judgment. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Property or a material part of the Collateral, or any judgment involving monetary damages shall be entered against Borrower or Borrower's managing member, which shall become a lien on the Property or any portion thereof or interest therein and such execution, attachment, or similar process or judgment is not released, bonded, satisfied, vacated, or stayed within ninety (90) days after its entry or levy.

6.9 Cure by Members of Borrower. Lender agrees that any of the members of Borrower shall have the right, but not the obligation, to cure any Event of Default or default by Borrower under any of the Loan Documents. Lender further agrees any cure of any Event of Default or default made by any of the members of Borrower shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made by Borrower.

ARTICLE 7.
LENDER'S REMEDIES

Immediately upon or any time after the occurrence of any Event of Default hereunder, Lender may exercise any remedy available at law or in equity, including but not limited to those listed below and those listed in the other Loan Documents, in such sequence or combination as Lender may determine in Lender's sole discretion:

7.1 Performance of Defaulted Obligations. Lender may make any payment or perform any other obligation under the Loan Documents which Borrower has failed to make or perform, and Borrower hereby irrevocably appoints Lender as the true and lawful attorney-in-fact for

Borrower to make any such payment and perform any such obligation in the name of Borrower, which appointment is coupled with Lender's interest in the Property and the Collateral. All payments made and expenses (including attorneys' fees and legal assistant's fees) incurred by Lender in this connection, together with interest thereon at rate set forth in the Note, from the date paid or incurred until repaid, will be part of the Secured Obligations and will be immediately due and payable by Borrower to Lender.

7.2 Specific Performance and Injunctive Relief. Notwithstanding the availability of legal remedies, Lender will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Borrower to cure or refrain from repeating any default.

7.3 Acceleration of Secured Obligations. Upon an Event of Default, Lender may, without notice or demand, declare all of the Secured Obligations immediately due and payable in full.

7.4 Possession of Property. Lender may enter and take possession of the Property without seeking or obtaining the appointment of a receiver, may employ a managing agent for the Property, and may complete any development and construction which may be in progress with respect to all or any part of the Property, either in Lender's name or in the name of Borrower.

7.5 Non-Recourse. The Loan is nonrecourse as provided in the Note.

7.6 Enforcement of Security Interests. Lender may exercise all rights of a secured party under the Code with respect to the Collateral, including but not limited to taking possession of, holding, and selling the Collateral and enforcing or otherwise realizing upon any accounts and general intangibles. Any requirement for reasonable notice of the time and place of any public sale, or of the time after which any private sale or other disposition is to be made, will be satisfied by Lender's giving of such notice to Borrower at least fifteen (15) days prior to the time of any public sale or the time after which any private sale or other intended disposition is to be made. If permitted by statute or court decision, the Collateral may be sold by the Public Trustee as part of the foreclosure sale of the Property.

7.7 Foreclosure Against Property. Subject to Section 7.11 herein, Lender may foreclose this Deed of Trust, insofar as it encumbers the Property, either by judicial action or through a public trustee foreclosure sale through the Public Trustee in the manner provided by statute.

(a) If this Deed of Trust encumbers more than one parcel of real estate, foreclosure may be by separate parcel or lot or en masse, as Lender may elect in its sole discretion. Foreclosure through Public Trustee will be initiated by Lender's filing of its notice of election and demand for sale with Public Trustee. Upon the filing of such notice of election and demand for sale, Public Trustee shall promptly comply with all notice and other requirements of the laws of

Colorado then in force with respect to such sales, and shall give four weeks' public notice of the time and place of such sale by advertisement weekly five times in some newspaper of general circulation then published in the County in which the Property is located.

(b) All fees, costs and expenses of any kind incurred by the Public Trustee or Lender in connection with, or preparation for, foreclosure of this Deed of Trust, including, without limitation, the costs of any appraisals, engineering or environmental testing and evaluations of the Property obtained by Lender, all costs of any receivership for the Property advanced by Lender, and all attorneys', legal assistants' and consultants' fees, expert's evidence, stenographer's charges, publication costs, (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) costs of procuring all such title searches, title insurance policies, and similar data with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale the true condition of title to or value of the Property, incurred by Lender, shall constitute a part of the Secured Obligations and may be included as part of the amount owing from Borrower to Lender at any foreclosure sale. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorney employed by Lender in any litigation or proceeding affecting this Deed of Trust, the Loan Agreement, the Note or the Property, including probate, bankruptcy proceedings, proceedings to obtain a receiver, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Borrower, with interest thereon at the rate set forth in the Note and shall be secured by this Deed of Trust.

(c) The proceeds of any sale under this paragraph shall be applied first to the fees and expenses of the officer conducting the sale, and then to the reduction or discharge of the Secured Obligations; any surplus remaining shall be paid over to Borrower or to such other person or persons as may be lawfully entitled to such surplus.

(d) At the conclusion of any foreclosure sale, the officer conducting the sale shall execute and deliver to the purchaser at the sale a certificate of purchase which shall describe the property sold to such purchaser and shall state that upon the expiration of the applicable periods for redemption, the holder of such certificate will be entitled to a deed to the property described in the certificate. After the expiration of all applicable periods of redemption, unless the property sold has been redeemed by Borrower, the officer who conducted such sale shall, upon request, execute and deliver an appropriate deed to the holder of the certificate of purchase or the last certificate of redemption, as the case may be.

(e) Nothing in this section dealing with foreclosure procedures or specifying particular actions to be taken by Lender or by Public Trustee or any officer conducting the foreclosure sale shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by the laws of the State of Colorado, and any such inconsistency shall be resolved in favor of Colorado law applicable at the time of foreclosure.

7.8 Appointment of Receiver. Lender shall be entitled, as a matter of absolute right and without regard to the value of any security for the Secured Obligations or the solvency of any person liable therefor, to the appointment of a receiver for the Property, the leases between Borrower and tenants of the Project (collectively, "Leases"), and the rents and revenues of the Project (the "Rents and Revenues") upon ex parte application to any court of competent jurisdiction. Borrower waives any right to any hearing or notice of hearing prior to the appointment of a receiver.

7.9 Right to Make Repairs, Improvements. Should any part of the Property come into the possession of Lender or a receiver, whether before or after an Event of Default, Lender or the receiver and receiver's agents shall be empowered subject to the rights of any lender under a superior deed of trust:

(a) To take possession of the Property, Leases, Rents and Revenues and any business conducted by Borrower or any other person thereon and any business assets used in connection therewith and any Property in which Lender has a security interest granted by Borrower and, if the receiver deems it appropriate, to operate the same;

(b) To exclude Borrower and Borrower's agents, servants, and employees from the Property;

(c) With or without taking possession of the Property, to collect the Rents and Revenues, including those past due and unpaid and security deposits;

(d) To rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such terms as Lender shall, and to pay any leasing or rental commissions associated therewith in its discretion, determine;

(e) To continue the development, marketing and sale of the Property or any portion thereof;

(f) To complete any construction or development which may be in progress;

(g) To do such maintenance and make such repairs and alterations as the receiver deems necessary;

(h) To use all stores of materials, supplies and maintenance equipment on the Property and to replace and replenish such items at the expense of the receivership estate;

(i) To pay the operating expenses of the Property, including costs of management and leasing or marketing thereof (which shall include lease commissions, sale commissions), payments under contracts and agreements for development and construction;

(j) To pay all taxes and assessments against the Property and any property which is collateral for the Secured Obligations, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance;

(k) To borrow from Lender such funds as may be reasonably necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Lender, but not in excess of the interest rate set forth in the Note; and

(l) Generally do anything which Borrower could legally do if Borrower were in possession of the Property.

(m) All expenses incurred by the receiver or the receiver's agent shall constitute part of the Secured Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership (including attorneys' fees incurred by the receiver and by Lender), to expenses of the Property, and to preserve, protect, maintain and operate the Property and any other collateral which is security for the Secured Obligations, and the balance shall be applied toward the Secured Obligations or any deficiency which may result from any foreclosure sale, and then in such other manner as the court may direct. Unless sooner terminated with the express consent of Lender, any such receivership will continue until all amounts remaining due under the Note have been discharged in full, or until Borrower's interest in the Property has passed after foreclosure sale and all applicable periods of redemption have expired, and in either case, the court has discharged the receiver. Borrower covenants to promptly reimburse and pay to Lender or such receiver, at the place where the Note is payable, or at such other place as may be designated in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Lender or such receiver in connection with its custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Lender or such receiver at the interest rate set forth in the Note, and all such expenses, costs, taxes, interest, and other charges shall be part of the Secured Obligations. It is agreed, however, that the risk of accidental loss or damage to the Property is undertaken by Borrower and, except for Lender's or such receiver's willful misconduct or gross negligence, Lender or such receiver shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured, or to complete development.

7.10 Further Assurances. Upon foreclosure of this Deed of Trust, all right, title, and interest of the Borrower in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by the Borrower. Borrower hereby agrees to execute all instruments of assignment or further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose. But nothing contained herein shall prevent Lender from terminating any subordinated Lease not approved by Lender through such foreclosure.

ARTICLE 8.
ASSIGNMENT OF RENTS AND LEASES

8.1 Assignment of Rents and Leases. To further secure the Secured Obligations, Borrower does hereby sell, assign and transfer unto Lender all rents, issues, profits, revenue, and income now due and which may hereafter become due under or by virtue of any Leases, tenancies or agreements for occupancy "Leases" (collectively "Rents and Revenues"), whether written or verbal, or any letting of, or of any agreement for the sale, use or occupancy of the Property or any part thereof, and all proceeds from, evidence of, and benefits and advantages to be derived therefrom, now or hereafter existing, whether or not with Lender's approval. The Borrower does hereby appoint irrevocably Lender its true and lawful attorney in its name and stead (with or without taking possession of the Property) to rent, lease or let any improvements located on the Property, and to collect all of said Rents and Revenues arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the Leases, or other agreements, written or verbal, or which may hereafter exist on the Property, on the condition that Lender hereby grants to Borrower a license to collect and retain such Rents and Revenues (but expressly not including the right to collect any rents more than one (1) month in advance or any amount to prepay, terminate, or "buy out" any Leases) prior to the occurrence of any Event of Default under the Loan Documents. Borrower expressly covenants to apply the Rents and Revenues received, after application for operating expenses and other permitted under this Deed of Trust and the Loan Documents, to payment of the Secured Obligations as and when the same become due and in compliance with the Loan Documents. Such license shall be revocable by Lender without notice to Borrower at any time upon or after an Event of Default under the Loan Documents, and immediately upon any such revocation, Lender shall be entitled to receive, and Borrower shall deliver to Lender, any and all Rents and Revenues theretofore collected by Borrower which remain in the possession or control of Borrower and all Leases, and other such agreements. It is the intention of the Borrower to create and grant, and it is the intention of Lender to create and receive, a present and absolute assignment of all of the Leases, similar agreements, Rents and Revenues now due or which may hereafter become due, but it is agreed that Lender's right to collect the Rents and Revenues is conditioned upon the existence of an Event of Default under the Loan Documents. Failure of Lender at any time or from time to time to enforce its rights under this ARTICLE 8 shall not in any manner prevent its subsequent enforcement, and Lender is not obligated to collect anything hereunder, but is accountable only for sums collected. Nothing contained herein shall be construed as constituting Lender a mortgagee in possession in the absence of the taking of actual possession of the Property by Lender pursuant to Section 8.6 (Lender's Right of Possession In Case of Default) hereof. In the exercise of the powers herein granted to Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

8.2 Covenants Regarding Leases. Borrower agrees:

(a) Not to execute any Leases (except for leases of space in the improvements on the Property made by Borrower in the ordinary course of Borrower's business) affecting the Property or any part thereof without the prior written consent of Lender;

(b) Not to collect any of the Rents and Revenues for more than one (1) month in advance of the time when the same become due under the terms thereof;

(c) Not to discount any future accruing Rents and Revenues;

(d) Other than to secure Loans listed on Exhibit B as Permitted Exceptions, not to execute any other assignments of said Leases or any interest therein or any of the Rents and Revenues thereunder without the prior written consent of Lender;

(e) That notwithstanding any variation of the terms of this Deed of Trust or any extension of time for payment thereunder or any release of part or parts of the Property, the Leases, Rents and Revenues hereby assigned, insofar as they relate to the unreleased Property, shall continue as additional security in accordance with the terms hereof; and

(f) To perform all of the Borrower's covenants and agreements under the Leases and not to suffer or permit to occur any release of liability of the lessees or purchasers.

8.3 Representations Regarding Leases. Borrower represents and warrants that, except for the Permitted Exceptions, (a) the Leases, if any, are in full force and effect; (b) the Leases and the Rents and Revenues thereunder have not been heretofore sold, assigned, transferred, or set over by Borrower or by any person or persons whatsoever; (c) no material default exists on the part of the lessees thereunder, or the Borrower as lessor; (d) no Rents and Revenues have been paid by any of the lessees for more than one (1) month in advance; (e) the payment of none of the rents have been or, will be waived, released, reduced, discounted or otherwise discharged or compromised by the Borrower directly or indirectly by assuming any lessee's obligations with respect to other premises; and (f) Borrower has good right to sell, assign, transfer, and set over the same and to grant to and confer upon Lender the rights, interests, powers, and authorities herein granted and conferred.

8.4 Further Assignments. Borrower shall give Lender at any time upon demand any further or additional forms of assignment of transfer of such Rents and Revenues, leases and security as may be reasonably requested by Lender, and shall deliver to Lender executed copies of all such leases and security.

8.5 Authority of Lender. Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Lender hereunder without investigating the reason for any action taken by Lender, or the validity or the amount of indebtedness owing to Lender, or the existence of an Event of Default under any Loan Document, or the application to be made by Lender of any amounts to be paid to Lender. The sole signature of Lender or a receiver shall be sufficient for the exercise of any rights under this ARTICLE 8 and the sole receipt of Lender or a receiver for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property; and Borrower hereby releases each such tenant and occupant which makes payments to Lender under this ARTICLE 8 from any liability under the applicable Lease or occupancy agreement. Checks for all or any part of the rentals collected under this ARTICLE 8 shall be drawn to the exclusive order of Lender or such receiver.

8.6 Lender's Right of Possession in Case of Default. In any case in which under the provision of this Deed of Trust, Lender has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, promptly upon demand of Lender, Borrower shall surrender to Lender and Lender shall be entitled to take actual possession of the Property or any part thereof personally, or by its agents or attorneys, as for condition broken, and Lender in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts of the Borrower or then owners of the Property relating thereto, and may exclude the Borrower, its agents or servants, wholly therefrom and may, as attorney-in-fact or agent of the Borrower, or in its own name as Lender and under the powers herein granted, hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the rents, issues, revenues and profits of the Property.

8.7 Severability and Survival. The provisions of this ARTICLE 8 shall survive the foreclosure of the lien of this Deed of Trust and the exercise of the power of sale granted under this Deed of Trust until the expiration of all periods of redemption following any such foreclosure or sale and thereafter with respect to all Rents and Revenues arising prior to or attributable to the period prior to the expiration of all such redemption periods.

ARTICLE 9.
MISCELLANEOUS PROVISIONS

9.1 Future Advances. This Deed of Trust secures future advances up to a total maximum principal amount of $[5,400,000] and shall be effective to secure payment of all advances, both obligatory and optional, up to such maximum principal amount to the same extent and with the same effect and priority as if such total maximum principal amount had been fully disbursed on or before the date this Deed of Trust was recorded. Without limiting any other provision of this Deed of Trust, this Deed of Trust shall also secure, to the same extent and with the same effect and priority, all expenses associated with the collection of the indebtedness secured hereby or foreclosure of this Deed of Trust and all additional amounts as set forth in Section 38-39-106, C.R.S., as amended, together with interest thereon as set forth herein, regardless of whether such additional amounts, when added to the principal amount of the indebtedness, exceed the maximum principal amount stated above.

9.2 Time of the Essence. Time is of the essence with respect to all provisions of this Deed of Trust.

9.3 Rights and Remedies Cumulative. Lender's rights and remedies under each of the Loan Documents are cumulative of the rights and remedies available to Lender under each of the other Loan Documents and those otherwise available to Lender at law or in equity. No act of Lender shall be construed as an election to proceed under any particular provision of any Loan Document to the exclusion of any other provision in the same or any other Loan Document, or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Lender.

9.4 No Implied Waivers. Lender shall not be deemed to have waived any provision of this Deed of Trust unless such waiver is in writing and is signed by Lender. Without limiting the generality of the preceding sentence, neither Lender's acceptance of any payment with knowledge of a default by Borrower, nor any failure by Lender to exercise any remedy following a default by Borrower shall be deemed a waiver of such default, and no waiver by Lender of any particular default on the part of Borrower shall be deemed a waiver of any other default or of any similar default in the future.

9.5 No Third Party Rights. No person shall be a third party beneficiary of any provision of this Deed of Trust. All provisions of this Deed of Trust favoring Lender are intended solely for the benefit of Lender, and no third party shall be entitled to assume or expect that Lender will or will not waive or consent to modification of any such provision in Lender's sole discretion.

9.6 Preservation of Liability and Priority. Without affecting the liability of Borrower or of any other person (except a person expressly released in writing) for payment and performance of all of the Secured Obligations, and without affecting the rights of Lender with respect to any security not expressly released in writing, and without impairing in any way the priority of this Deed of Trust over the interests of any person acquired or first evidenced by recording subsequent to the recording hereof, Lender may, either before or after the maturity of the Note, and without notice or consent: (a) release any person liable for payment or performance of all or any part of the Secured Obligations; (b) make any agreement altering the terms of payment or performance of all or any of the Secured Obligations; (c) exercise or refrain from exercising, or waive, any right or remedy which Lender may have under any of the Loan Documents; (d) accept additional security of any kind for any of the Secured Obligations; or (e) release or otherwise deal with any real or personal property securing the Secured Obligations. Any person acquiring or recording evidence of any interest of any nature in the Property or the Collateral shall be deemed, by acquiring such interest or recording any evidence thereof, to have agreed and consented to any or all such actions by Lender.

9.7 Subrogation of Lender. Lender shall be subrogated to the lien of any previous encumbrance discharged with funds advanced by Lender under the Loan Documents, regardless of whether such previous encumbrance has been released of record.

9.8 Notices. Any notice required or permitted to be given by Borrower or Lender under this Deed of Trust shall be in writing and will be deemed given (a) upon personal delivery or upon confirmed transmission by telecopier or similar facsimile transmission device, (b) on the first business day after receipted delivery to a courier service which guarantees next-business-day delivery, or (c) on the third business day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to the Borrower:

c/o The NHP Foundation
1090 Vermont Avenue, NW, Suite 400
Washington, DC 20005
Attention: Neal Drobenare

With a copy to:

Ben Doyle, Esq.
New Communities Law PLLC
1624 Market Street, Suite 400
Denver, CO 80202

If to the Lender:

Town of Frisco
P.O. Box 4100 (Mailing)
1 East Main Street (Physical)
Frisco, Colorado 80443
Attention: Community Development Director

With a copy to:

Thad W. Renaud, Esq.
Murray Dahl Beery & Renaud LLP
710 Kipling Street, Suite 300
Lakewood, CO 80215

Any person may change such person's address for notices or copies of notices by giving notice to the other party in accordance with this section.

9.9 Defeasance. Upon payment and performance in full of all the Secured Obligations and all costs of releasing this Deed of Trust, Lender will execute and deliver to Borrower such documents as may be required to release this Deed of Trust of record.

9.10 Illegality. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Deed of Trust, the legality, validity, and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If the rights and liens created by this Deed of Trust shall be invalid or unenforceable as to any part of the Secured Obligations, then the unsecured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on the Secured Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Obligations.

9.11 Obligations Binding Upon Borrower's Successors. This Deed of Trust is binding upon Borrower and Borrower's successors and assigns, including all grantees and remote grantees of any interest of Borrower in the Property, and shall inure to the benefit of Lender, and its successors and assigns, and the provisions hereof shall likewise be covenants running with the land. The duties, covenants, conditions, obligations, and warranties of Borrower in this Deed of Trust shall be joint and several obligations of Borrower and Borrower's successors and assigns.

9.12 Governing Law. The laws of the State of Colorado shall govern the validity, construction, enforcement, and interpretation of this Deed of Trust, without regard to principles of conflicts of laws.

9.13 Survival. This Deed of Trust shall survive foreclosure of the liens created hereby, to the extent necessary to fulfill its purposes.

9.14 Captions. The captions and headings of various paragraphs of this Deed of Trust are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

9.15 Tax Credit Requirements. Notwithstanding any provision in this Deed of Trust or other documents evidencing the Loan, the Lender acknowledges that the Loan and this Deed of Trust is subordinate to the requirements of Section 42(h)(6)(E) of the Internal Revenue Code pertaining to limitations on eviction of tenants and increases in rent for the three-year period following foreclosure.

9.16 Organizational Number. The Employer Identification Number of Borrower is 20251870254.

[*Remainder of this page intentionally left blank*.]

IN WITNESS WHEREOF, the undersigned has signed and delivered this Deed of Trust as of the date first mentioned above.

BORROWER:

WEST MAIN APARTMENTS LLLP,
a Colorado limited liability limited partnership

By: NHPF West Main GP, LLC, a Colorado limited liability company, its General Partner

By: The NHP Foundation,
a District of Columbia nonprofit corporation,
its Manager

By: ______________________________
Name: John M. Welsh
Its: Senior Vice President

STATE OF ____________)
) ss.
COUNTY OF _________)

The foregoing instrument was acknowledged before me this ____ day of July, 2026, by John M. Welsh, as the Senior Vice President of The NHP Foundation, a District of Columbia nonprofit corporation, as the Manager of NHPF West Main GP, LLC, a Colorado limited liability company, as General Partner of West Main Apartments LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

My commission expires:____________________________

____
Notary Public

(S E A L)

The terms, conditions, and obligations of this Deed of Trust are hereby recognized, acknowledged, and accepted by the Lender.

LENDER:

TOWN OF FRISCO,
a Colorado home rule municipal corporation

(S E A L)

Attest:

____
Stacey Campbell, Town Clerk

By: __________________________
Name: Frederick J. Ihnken
Its: Mayor

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of July, 2026 by Frederick J. Ihnken, the Mayor of the Town of Frisco, a Colorado home rule municipal corporation.

Witness my hand and official seal.

My commission expires:_____________________________

____
Notary Public

(S E A L)

EXHIBIT A
PROPERTY

[TO BE INSERTED]

<u>EXHIBIT B</u>
PERMITTED EXCEPTIONS

All matters listed of record on title.

2^{nd} AMENDED AND RESTATED LOAN AGREEMENT

(101 West Main Street, Frisco, CO – Capital Loan)

This 2^{nd} Amended and Restated Loan Agreement (this "Agreement"), is made and entered into as of July __, 2026 ("Effective Date"), by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation (the "Lender"), WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership (the "Borrower") and consented to by NHPF WEST MAIN, LLC, a Colorado limited liability company (the "Assignor").

RECITALS

A. Assignor's predecessor and Lender entered into that original Loan Agreement dated June 16, 2023 ("2023 Loan Agreement").

B. Assignor and Lender entered into that certain Amended and Restated Loan Agreement dated August 27, 2025 (together with the 2023 Loan Agreement, the "Original Loan Agreement").

C. This Loan Agreement is made by Borrower and Lender to restate and replace the Original Loan Agreement in its entirety and supersede the terms and conditions under the Original Loan Agreement.

D. Assignor desires to assign its rights and obligations under the Original Loan Agreement to Borrower. Borrower desires to assume Assignor's rights and obligations under the Original Loan Agreement. Lender desires to consent to such assignment and assumption.

E. Lender and Borrower also desire to memorialize an increase in the principal amount of the Loan, as such capitalized term was defined in the Original Loan Agreement. The parties do not intend to modify any other terms of the Loan by entering into this Agreement.

F. The purpose of the loan was to facilitate the development of that certain real property subject to a ground lease between Borrower, as tenant, and Lender, as landlord, dated on or about the date hereof, and legally described on the attached Exhibit A (the "Property"), which the Borrower has agreed to develop and operate as affordable multifamily housing and certain related uses, including commercial space to be owned by Lender.

G. That certain Development Agreement dated as of May 23, 2023 (as amended, the "Development Agreement"), by and between Lender and The NHP Foundation, a District of Columbia nonprofit corporation (the "Sponsor" and an affiliate of Assignor and Borrower), sets forth certain terms and conditions regarding the design and construction of the Property.

H. Pursuant to the Development Agreement, if the Colorado Housing and Finance Authority ("CHFA") allocated low-income housing tax credits ("LIHTC") to the Borrower for the Property, the initial investor member of Borrower will be replaced with a nationally-recognized tax credit investor (the "LIHTC Closing"). CHFA has now awarded LIHTC to the Sponsor for the project, and in connection with the LIHTC Closing, the Borrower anticipates securing construction and permanent mortgage financing secured by the Property (the "First Lien LIHTC Loan").

I. Pursuant to the Development Agreement, the following affordability covenants for the benefit of the Town have been recorded in the real property records of Summit County, encumbering the Property and imposing certain restrictions on the use of the Property, specifically, that certain Residential Housing Restrictive Covenant and Notice of Lien for 101 W. Main Street, Town of Frisco, Summit County Colorado recorded June 22, 2023 under reception no. 1312893, and that certain 101 W. Main Housing Planned Unit Development recorded May 22, 2024 under reception no. 1330940 (together, the "Affordability Covenant").

J. The parties wish to commit their agreement to writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter stated, the parties hereto agree as follows:

1. **<u>Assignment, Assumption, and Amendment of the Loan</u>**.

(a) Effective as of the Effective Date, Assignor assigns, transfers, and conveys to Borrower all of Assignor's right, title, interest, duties, and obligations as borrower under the Original Loan Agreement and all related loan documents, including the promissory note, deed of trust, environmental indemnity, and other ancillary documents evidencing security for the Loan (collectively, the "Loan Documents"), to the extent arising from and after the Effective Date. Assignee accepts such assignment and expressly assumes and agrees to pay, perform, observe, and be bound by all the terms, covenants, liabilities, and obligations of the borrower under the Loan Documents from and after the Effective Date. Lender consents to such assignment and assumption, and releases Assignor from liability under the Loan Documents. From and after the Effective Date, Borrower shall be deemed the "Borrower" for all purposes under the Loan Documents.

(b) Lender agrees to increase the principal amount of the Loan from Two Million Five Hundred Thousand and no/100 ($2,500,000.00) to Four Million Nine Hundred Thousand and no/100 ($4,900,000.00) (the "New Loan Amount").

2. **<u>Loan Terms / Disbursement.</u>** On the Effective Date, the Borrower shall execute and deliver this Agreement to the Lender, an amended and restated Promissory Note (or an allonge to the original promissory note, if required by Lender) in the original principal amount of the New Loan Amount (the "Restated Note"), an amended and restated Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Leases securing the Note against the Property (or a modification of deed of trust, if required by Lender) (the "Restated Deed of Trust"), and the Environmental Indemnity Agreement by Borrower and Sponsor for the benefit of Lender dated June 16, 2023 (the "Environmental Indemnity"), the Unconditional Guaranty made by Sponsor for the benefit of Lender dated June 16, 2023 (the "Guaranty"), and the Collateral Assignment of Membership Interest made by Sponsor for the benefit of Lender dated June 16, 2023, which substitute Collateral Assignment will be subordinate to any collateral assignment of partnership

interest that Sponsor or its affiliates are required to grant to First Lien Loan lenders (the "Collateral Assignment" and together with this Agreement, the Restated Note, the Environmental Indemnity, and the Guaranty, the "Restated Loan Documents"). Lender shall disburse funds to Borrower on the Effective Date, and the Borrower shall repay the Loan pursuant to the terms of the Note.

3. Representations and Warranties. To induce Lender to execute this Agreement and perform the same, Borrower hereby represents, warrants and covenants to Lender as follows:

(a) Borrower has good and marketable leasehold interest to the Property, subject only to the Permitted Exceptions (as defined in the Restated Deed of Trust), and the liens and security interests created by the Restated Loan Documents, as applicable, will upon recording be valid, effective and enforceable;

(b) Borrower is a limited liability limited partnership, duly organized and existing under the laws of the State of Colorado and qualified to do business in any other state in which the nature of its business requires it to be so qualified;

(c) The Restated Loan Documents, as executed and delivered to Lender by Borrower and Sponsor, are valid and binding obligations of Borrower and Sponsor, enforceable in accordance with their terms;

(d) Borrower has full power and authority to execute, deliver, and perform this Agreement and any other applicable Restated Loan Document to which Borrower is a party, and the execution, delivery and performance of the Restated Loan Documents do not require the consent of any Person not heretofore obtained;

(e) The execution, delivery, and performance of this Agreement and the other Restated Loan Documents do not, and will not, (i) constitute a breach or default under any other agreement to which Borrower is a party or may be bound or affected, or (ii) violate any law or court order that may affect the Property or Borrower's use thereof;

(f) The execution, delivery, and performance of the Unconditional Guaranty, will not (i) constitute a breach or default under any other agreement to which the Sponsor is a party or may be bound or affected, or (ii) violate any law or court order that may affect the Sponsor;

(g) To Borrower's knowledge, no conditions exist that would prevent Borrower from fully complying with the terms, conditions and provisions of this Agreement within the time limits proscribed by this Agreement;

(h) No litigation or proceedings are pending or, to Borrower's knowledge, threatened that are reasonably likely to (i) affect the validity or priority of the lien of the Restated Deed of Trust, (ii) have a material adverse effect on Borrower's or Sponsor's ability to perform its obligations under any of the Restated Loan Documents;

(i) All financial statements and other information, including any information in any loan application, previously furnished to Lender by Borrower, Sponsor, and any entity having an ownership interest in Borrower and/or Sponsor are true, complete, and correct in all material respects, and no material adverse change has occurred since the furnishing by each of the foregoing, respectively, of such financial statements and information;

(j) Borrower shall construct improvements on the Property consisting solely of affordable housing and commercial space (the "Improvements"), in accordance with the Development Agreement, and all such plans and specifications and construction and installation of the Improvements pursuant thereto and the use of the Property contemplated thereby shall comply with all applicable laws and all permits and approvals issued thereunder, affecting the Property and the intended occupancy, use and enjoyment of the Property, including, but not limited to, applicable subdivision laws, licenses and permits, building codes, zoning ordinances, flood disaster, environmental protection and equal employment regulations and appropriate supervising boards of fire underwriters and similar agencies;

(k) All utility services necessary for the proper operation of the Property for its intended purposes are available at the Property or will be made available to the Property prior to completion of the Improvements, including water supply, storm and sanitary sewer facilities, gas, electricity, and telephone facilities;

(l) The Property fronts on a publicly maintained road or street and the Property has both legal and practical access to the same;

(m) Borrower has not and will not transfer, assign, convey, hypothecate or encumber any of the air rights pertaining to the Property without the prior written consent of Lender;

(n) Except as disclosed in the environmental reports provided to Lender prior to the date of this Agreement, Borrower and, to Borrower's actual knowledge, any previous owner of the Property has not used, stored, manufactured, generated, transported to or from, or disposed of any hazardous materials, radioactive materials, flammable explosives, or related material on or in connection with the Property or the business of Borrower on the Property in violation of applicable Laws. Borrower will not permit any lessee on the Property to use, store, manufacture, generate, transport to or from, or dispose of any hazardous materials on or in connection with any property or the business on any property in violation of applicable laws. All required environmental impact statements as required by any governmental agency having jurisdiction over the Property or the construction of the Improvements have been or will be duly filed and approved, or a negative declaration has been issued.

For purposes of this Agreement, the term "hazardous materials" shall mean, collectively, (i) hazardous wastes, hazardous materials, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including, without limitation, substances defined as "hazardous wastes," "hazardous materials," "hazardous substances", "toxic substances", "toxic materials", "toxic wastes", "pollutants", "contaminants", "radioactive materials", "toxic pollutants" or other similar designations in, or otherwise subject to regulation under any environmental law and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to any environmental law or other similar federal, state or local laws, regulations, rules or ordinance now or hereafter in effect relating to environmental matters; (ii) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto) or by any federal or state equivalent agency including the Colorado Department of Public Health and the Environment; (iii) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, or herbicide, or any other agricultural chemical; (iv) significant mold; (v) any other chemical, material, or substance that, because of its quantity, concentration, or physical or chemical characteristics, exposure to which is limited or regulated for health and safety reasons by any governmental agency, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment; and (vi) any substance the presence of which requires remedial work or investigation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law.

The term "environmental laws" shall mean any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, administrative rulings, court judgments and rulings and the like, as well as common law, relating to protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), relating to hazardous substances and/or relating to liability for or costs of other actual or threatened danger to human health or the environment, and shall include, but is not limited to, the following statutes, as amended, any successor thereto, any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq. (including, but not limited to, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act as recodified in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Clean Water Act, 33 U.S.C. §§ 1251, et seq.; the Clean Air Act, 42 U.S.C. §§ 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq.; the Occupational Safety and Health Act, 29 U.S.C. Chapter 15, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531, et seq.; Colorado's Hazardous Waste Sites law, C.R.S. §§ 25-16-101, et seq.; the Colorado Hazardous Substances Act of 1973, C.R.S. §§ 25-5-501, et seq.; the Colorado Water Quality Control Act, C.R.S. §§ 25-8-101, et seq.; the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq.;

Colorado's Petroleum Storage Tanks law, C.R.S. §§ 8-20.5-101, et seq.; Colorado's Radiation Control Law §§ 25-11-101, et seq.; and those federal, state, and local laws relating to asbestos and lead based paint. The term "environmental law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, conditioning transfer of property upon a negative declaration or other approval of a governmental agency of the environmental condition of any property; requiring notification or disclosure of releases of hazardous substances or other environmental condition of a property to any governmental agency or other person, whether or not in connection with any transfer of title to or interest in such property; imposing conditions or requirements in connection with environmental permits or other environmental authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the physical condition or use of any property; and relating to wrongful death, personal injury or property or other damage in connection with any physical condition or use of any property.

(o) Borrower possesses or shall obtain all licenses, approvals, permits, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, that are necessary to own the Property and construct the Improvements on the Property, and Borrower is not in violation of any valid rights of others with respect to the foregoing; and

(p) Borrower does not maintain a plan under the Employee Retirement Income Security Act of 1974.

Borrower agrees that all of said representations and warranties will be true in all material respects at the Effective Date of this Agreement and at all times thereafter, except as otherwise disclosed in writing to Lender.

4. **Additional Covenants of Borrower**.

(a) Liens and Contest Thereof. Borrower agrees that it will not suffer or permit any liens or claims other than the Permitted Exceptions (except those liens approved in writing by Lender), including, without limitation, any mechanics liens, be filed or otherwise asserted against all or any portion of the Property, and will discharge the same in case of the filing of any claims for lien or proceedings for the enforcement within forty-five (45) days after receipt of actual notice thereof; provided, however, that Borrower shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim. Borrower agrees that if Borrower fails either (a) to discharge, or (b) to contest claims asserted and give security or indemnity as provided for herein, then Lender may, at its election (but shall not be required to), following ten (10) business days' prior written notice to Borrower, procure the release and discharge of any such claim and any judgment or decree thereon and, further, may in its reasonable discretion effect any settlement or compromise of the same, and any amounts so expended by Lender, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be deemed to constitute disbursement of the proceeds of the Loan hereunder.

(b) Insurance. Borrower agrees to keep the Property insured at such levels and in such amounts as is acceptable to Lender, and to pay or cause to be paid all premiums on all insurance policies required from time to time, and as and when additional insurance is required from time to time during the progress of construction, and as and when any policies of insurance may expire, furnish to Lender certified copies with premiums prepaid, of additional and renewal insurance policies in companies with coverage and amounts reasonably satisfactory to Lender in accordance with the terms herein. Lender shall be listed as an additional insured on any such insurance policies.

(c) Payment of Taxes. Borrower agrees to pay special assessments that have been placed in collection (regardless of whether the same are payable in installments) and to pay all real estate taxes and assessments of every kind upon the Property before the same become delinquent.

(d) Lender's Fees and Expenses. Borrower shall pay all actual costs, fees and expenses incurred by Lender in connection with the Loan, including, without limitation, all title insurance premiums, all costs to prepare and review the Restated Loan Documents, all costs to prepare or to review environmental studies and reports, any other third-party consultants retained by Lender (including, without limitation, consultants conducting construction Property and cost review, construction progress review, and Property administration services), survey costs, appraisal costs, recording fees and attorneys' fees. Borrower shall also pay all costs and expenses of any kind and nature incurred by Lender in the administration or enforcement of this Agreement or any of the other Restated Loan Documents, including, without limitation, all attorneys' fees, consultants' fees, appraisal fees and costs, receivers' fees, and all costs and expenses incurred by Lender in protecting its interest in any collateral for the Loan or in connection with a waiver, release, discharge, satisfaction, modification, amendment or consent under this Agreement or any other Restated Loan Document. Lender shall have the right, at its sole option, to advance proceeds of the Loan for the payment of costs and expenses described in this section and all sums so advanced shall be deemed a part of the Loan and secured by the Restated Loan Documents.

(e) Furnishing Information. Borrower will (i) promptly supply Lender with such information concerning its affairs and property as Lender may reasonably request from time to time hereafter; (ii) promptly notify Lender of any condition or event of which Borrower is aware that constitutes a breach or Event of Default of any term, condition, warranty, representation, or provision of this Agreement or any other agreement, and of any material adverse change in its financial conditions; (iii) maintain a standard and modern system of accounting in accordance with accounting principles consistently applied; (iv) permit Lender or any of its agents or representatives to have access to and to examine all of its books and records regarding the Property upon reasonable advance notice to Borrower during business hours; and (v) upon reasonable advance notice to Borrower, permit Lender to copy and make abstracts from any and all of said books and records related to the Property. Lender shall take all reasonable good faith efforts to keep such information confidential. Without limiting the generality of the foregoing, Borrower will deliver the following documents to Lender:

i. The Borrower shall, upon written request of Lender, provide financial projections for the Property for the ensuing year within sixty (60) days of Borrower's fiscal year-end;

ii. Within ten (10) days of (i) any written notice from any governmental agency concerning any potential violation of environmental laws, including, but not limited to, any notice of any proceeding or inquiry with respect to the presence of any hazardous materials on the Property or the migration thereof from or to other property, (ii) any and all claims made or threatened in writing by any third person against or relating to the Property concerning any loss or injury resulting from hazardous materials, or (iii) Borrower's discovery of any occurrence or condition on any property adjoining or in the vicinity of the Property that could reasonably likely cause the Property, or any part thereof, to be subject to any restrictions on the ownership, occupancy, transferability, or loss of the Property under any law, Borrower shall deliver to Lender a report regarding such contact and setting forth in detail and describing any action which Borrower proposes to take with respect thereto, signed by Borrower;

iii. Within ten (10) business days of becoming aware of any developments or other information which may materially and adversely affect the development of the Property, or Borrower's ability to perform this Agreement or the other Restated Loan Documents, notice specifying the nature of such development or information and such anticipated effect, which shall be promptly confirmed in writing;

iv. Borrower shall provide to Lender within ten (ten) business days after Lender's request, a progress report on the development of the Improvements in form and content satisfactory to Lender;

v. Promptly following the request from Lender, quarterly balance sheets and income statements for itself in form and content satisfactory to Lender;

vi. After issuance of a certificate of occupancy for the Improvements on the Property, operating statements prepared by Borrower in form and content satisfactory to Lender, no later than March 1 of each calendar year for the six (6) month period immediately preceding December 31 and September 1 of each year for the six (6) month period immediately preceding July 1; and

vii. Any other financial documents of Borrower and Sponsor that Lender may reasonably request.

(f) Notice of Litigation. Promptly following Borrower's receipt of notice of litigation or of the following, Borrower will give, or cause to be given, prompt written notice to Lender of (a) any action or proceeding which is instituted by or against it in any federal or state court or before any commission or other regulatory body, federal, state or local, foreign or domestic, or any such proceedings which are threatened against it which, if adversely determined could have a material and adverse effect upon its business, operations, properties, assets, management, ownership or condition (financial or otherwise), (b) any other action, event or condition of any nature which may have a material and adverse effect upon its business, operations, management, assets, properties, ownership or condition (financial or otherwise), or which, with notice or lapse of time or both, would constitute an Event of Default or a default under any other material contract, instrument or agreement to which it is a party or to which it or any of its properties or assets may be bound or subject that could result in a material adverse change.

(g) Terrorism and Anti-Money Laundering. Borrower warrants and agrees as of the Effective Date and throughout the term of the Loan: (i) Borrower; (ii) any person controlling or controlled by Borrower; (iii) if Borrower is a privately held entity, any Person having a beneficial interest in Borrower; or (iv) any person for whom Borrower is acting as agent or nominee in connection with this transaction, is not an OFAC Prohibited Person. To comply with applicable U.S. Anti-Money Laundering Laws and regulations, all payments by Borrower to Lender or from Lender to Borrower will only be made in Borrower's name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a "foreign shell bank" within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 et seq.), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.

To provide Lender at any time and from time to time during the term of the Loan with such information as Lender determines to be necessary or appropriate to comply with the Anti-Money Laundering Laws and regulations of any applicable jurisdiction, or to respond to requests for information concerning the identity of Borrower, any Person controlling or controlled by Borrower or any Person having a beneficial interest in Borrower, from any Governmental Agency, self-regulatory organization or financial institution in connection with its anti-money laundering compliance procedures, or to update such information. The representations and warranties set forth in this Section shall be deemed repeated and reaffirmed by Borrower as of each date that Borrower makes a payment to Lender under the Note, this Agreement and the other Restated Loan Documents or receives any payment from Lender. Borrower agrees promptly to notify Lender in writing should Borrower become aware of any change in the information set forth in these representations.

(h) No Transfer or Further Encumbrance. Except as otherwise expressly set forth in this Agreement, Borrower shall not, without the prior written consent of Lender:

i. Except for the Permitted Exceptions, create, incur, assume, permit or suffer to exist, any mortgage, deed of trust, pledge, lien, hypothecation, charge (fixed or floating), security interest or other encumbrance whatsoever on the Property or any interest therein;

ii. Transfer the Property, or any interest therein;

iii. Enter into a sublease for all or any portion of the Property, except for as approved in writing by Lender or except residential or commercial leases in the ordinary course of business and in the form approved by Lender;

iv. Become a party to any transaction whereby the Property or any portion thereof, or all or any substantial part of the properties, assets or undertakings of Borrower (whether legally or beneficially owned by Borrower), would become the property of any other Person, whether by way of transfer, sale, conveyance, lease, sale and leaseback, or otherwise;

v. Develop or use the Property for any purpose other than for affordable housing and commercial space in accordance with the Development Agreement;

vi. Transfer, convey, hypothecate, or sell (or permit to be transferred, conveyed, hypothecated or sold) any partnership or other interests in Borrower, except in accordance with the partnership agreement of Borrower (as approved by Lender) (the "Partnership Agreement") or any purchase option or right of first refusal to the benefit of the affiliates of Borrower;

vii. Change any general partner of Borrower or any authorized signatory of Borrower, except in accordance with the Partnership Agreement and then only if prior to such transfers or change (whether through removal, replacement or otherwise) the transferee executes an assignment of general partner's interest and security agreement in the form executed as of the Effective Date and which form shall be delivered to Lender before such change in the general partner;

viii. Notwithstanding anything to the contrary contained herein, the following transactions are hereby deemed to be expressly permitted hereunder and shall for purposes of the Restated Loan Documents constitute a "Permitted Transfer":

1. Conveyance of the Property to an affiliate of Sponsor in conjunction with the LIHTC Closing;

2. Issuance and conveyance of an investor limited partner interest in Borrower to a LIHTC investor (the "Investor") in conjunction with the LIHTC Closing;

3. After the LIHTC Closing, the transfer by the Investor of its membership interest in Borrower to any other entity which is an affiliate of the Investor or which is controlled directly by the Investor; or

4. The removal of any general partner by Investor and the concurrent replacement of the removed general partner with an affiliate of the Investor; provided, however, that the prior written notice to Lender shall

have first been delivered for the replacement of the removed general partner with an entity other than an affiliate of the Investor.

(i) Existence; Single Purpose Entity. Borrower will do or cause to be done all things necessary to maintain its legal existence and powers as a limited liability limited partnership organized in the State of Colorado and registered and qualified to do business in the State of Colorado. Borrower's sole business purpose shall be to own and operate the Property. Borrower: (a) shall conduct business only in its own name and under any trade name for the Property, (b) shall not engage in any business unrelated to the Property, own any real property other than the Property, or have any assets unrelated to the Property, (c) shall not have any indebtedness other than as permitted under this Agreement, or consented to in writing by Lender, (d) shall have its own separate books, records, and accounts (with no commingling of assets), (e) shall hold itself out as being an entity separate and apart from any other Person or entity, (f) shall observe limited liability limited partnership formalities independent of any other entity, (g) shall not change its Partnership Agreement, unless otherwise consented to by Lender or permitted herein, and (h) shall not change its name, identity, or organizational structure, unless Borrower shall have obtained the prior written consent of Lender to such change, and shall have taken all actions necessary or requested by Lender to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Restated Loan Documents.

(j) No Additional Indebtedness/Contingent Obligations. Borrower shall not create, incur, assume or suffer to exist any Indebtedness, except for the Loan. Borrower shall not (i) endorse, guarantee, contingently agree to purchase or to provide funds for the payment of, or otherwise become contingently liable upon, any indebtedness of any other person, except by the endorsement of negotiable instruments for deposit or collection (or similar transactions) in the ordinary course of business, or (ii) agree to maintain the net worth or working capital of, or provide funds to satisfy any other financial test applicable to, any other person other than a senior lender pursuant to loan terms consented to by Lender.

(k) Dissolution, Liquidation other Restrictions. Borrower shall not dissolve or liquidate, or merge or consolidate with or into any other entity, or turn over the management or operation of its property, assets or business to any other person, other than consented to by Lender, which consent shall not be unreasonably withheld, conditioned, or delayed.

(l) Compliance with Development Agreement and Affordability Covenant. Borrower agrees to comply with all obligations under the Development Agreement and Affordability Covenant.

5. **Non-Recourse.** The Loan is nonrecourse as provided in the Note.

6. **Events of Default.** The following shall constitute an Event of Default under the terms of this Agreement if not cured within any applicable cure period provided hereunder or under any other Loan Document:

(a) If the Borrower fails to duly and punctually perform its obligations under this Agreement, or it violates the covenants contained in any of the Restated Loan Documents, the Development Agreement, or the Affordability Covenant in any material respect, and such failure remains uncured after thirty (30) days of Borrower's receipt of written notice of such failure from Lender.

(b) If Borrower fails to pay any installment of principal or interest on the Note when due, and such failure is not cured within ten (10) days.

(c) If Borrower makes a general assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they mature, files or has filed against it a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement with creditors or other similar relief under the Federal Bankruptcy Laws or under any other applicable law of the United States of America or any state thereof, consents to the appointment of a trustee or receiver for Borrower or for its property; or takes any action for the purpose of effecting or consenting to any of the foregoing.

(d) If an order, judgment or decree shall be entered appointing, without Borrower's consent, a trustee or receiver for Borrower or a substantial part of its property, or approving a petition filed against Borrower seeking a reorganization, arrangement with creditors or other similar relief under the federal bankruptcy laws or under any other applicable law of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof.

The occurrence of any of the events described in this Section 6, shall be an "Event of Default." Upon the occurrence of an Event of Default, the Lender shall provide written notice, as provided in this Section 6, to the Borrower. The Borrower shall have the right to cure any such default within the timeframes provided in this Agreement. If the Borrower fails to timely cure such default, then the Lender shall have all remedies as are set forth in the Note and Deed of Trust or otherwise at law.

Lender agrees that any of the members of the Borrower shall have the right, but not the obligation, to cure any Event of Default or default by the Borrower under any of the Restated Loan Documents. Lender further agrees any cure of any Event of Default or default made by any of the members of the Borrower shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made by the Borrower.

7. **Miscellaneous.**

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

(b) No person not a party to this Agreement shall have or enjoy any rights hereunder and all third-party beneficiary rights are expressly negated. Without limiting the generality of the foregoing, no one other than Borrower shall have any rights to obtain or compel a disbursement of proceeds of the Loan hereunder.

(c) No amendment, change, waiver or modification of this Agreement shall be valid unless it is in a written document which Borrower and Lender sign, and Lender's waiver of any breach or default of any of Borrower's obligations, agreements or covenants under the Restated Loan Documents shall not be deemed to be a waiver of any subsequent breach of the Restated Loan Documents, or any other obligation, agreement or covenant. This Agreement, together with all exhibits, schedules, and any other documents expressly incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written negotiations, representations, understandings, and agreements relating to such subject matter. Lender's forbearance in pursuing or enforcing a remedy for Borrower's breach of any of the obligations set forth in the Restated Loan Documents shall not be deemed a waiver of Lender's rights and remedies with respect to such breach.

(d) This Agreement may be executed simultaneously in two or more counterparts, each of which shall be an original, but all of which shall constitute one agreement.

(e) This Agreement shall be governed by, interpreted, and construed in accordance with the laws of the State of Colorado.

(f) This Agreement shall remain effective so long as there are sums remaining outstanding on the Note.

(g) Any notices required or contemplated hereunder shall be effective upon the placing thereof in the United States mail, certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to the Borrower:

c/o The NHP Foundation
1090 Vermont Avenue, NW, Suite 400
Washington, DC 20005
Attention: Neal Drobenare, Senior Vice President

With a copy to:

Ben Doyle, Esq.
New Communities Law PLLC

1624 Market Street, Suite 400
Denver, CO 80202

If to the Lender:

Town of Frisco
P.O. Box 4100 (Mailing)
1 East Main Street (Physical)
Frisco, Colorado 80443
Attention: Community Development Director

With a copy to:

Thad W. Renaud, Esq.
Murray Dahl Beery & Renaud LLP
710 Kipling Street, Suite 300
Lakewood, CO 80215

(h) The Borrower consents to the personal jurisdiction of the state and federal courts located in the State of Colorado in connection with any controversy relating to this Agreement, the Note and any other Restated Loan Documents related thereto, waives any argument that venue in such forum is not convenient and agrees that any litigation initiated by Borrower against Lender in connection with this Agreement, the Note and any other Restated Loan Documents related thereto shall be venued in either the district court of Summit County, Colorado or in the United States District Court, District of Colorado.

(i) By making the Loan contemplated herein, Lender does not become a partner or joint venturer with Borrower in connection with the Property or the Property.

8. Investor Provisions.
   (a) The withdrawal, removal, transfer and/or replacement of the General Partner of Borrower pursuant to the terms of the Amended and Restated Partnership Agreement of Borrower ("Borrower's Partnership Agreement") shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan; provided that Borrower agrees to notify the Lender of any proposed replacement General Partner prior to replacement, and, upon replacement, shall notify the Lender of the name and contact information of the replacement General Partner with reasonable promptness.
   (b) Nothing in the Loan Documents shall limit or restrict the ability of Borrower's Limited Partner, U.S. Bancorp Community Development Corporation, its successors and assigns (the "Limited Partner") to transfer, sell or assign its ownership interest in Borrower, from time to time, without consent of Lender, provided that said Limited Partner remains liable for payment of any then unpaid capital contributions to Borrower, as and when payable, as set forth in Borrower's Partnership Agreement, notwithstanding any such transfer, sale or assignment. In particular, Lender hereby consents

to any transfers, sales or assignments of membership interests in Borrower to any affiliate of the Limited Partner or any entity in which the Limited Partner, or an affiliate, is the manager or General Partner and agrees that such transfers shall not constitute defaults under the Loan Documents.

(c) Copies of all notices to Borrower under the Loan Documents shall be sent to Borrower's Limited Partner in accordance with the procedures for delivering notices set forth in the Loan Documents to the following address or such alternate or additional contact names and/or addresses of which Lender is so notified in writing by the Limited Partner:

U.S. Bancorp Impact Finance
505 North Seventh Street, 10th Floor
SL-MO-T10F
St. Louis, MO 63101
USB Project No: 31728
Attn.: Director of LIHTC Asset Management

and

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

[SIGNATURE PAGES FOLLOW]

IN TESTIMONY WHEREOF, Borrower has executed this 2nd Amended and Restated Loan Agreement (101 West Main Street, Frisco, CO) as of the day and year first above written.

WEST MAIN APARTMENT LLLP,
a Colorado limited liability limited partnership

By: NHPF West Main GP, LLC,
a Colorado limited liability company
Its: General Partner

By: The NHP Foundation,
a District of Columbia non-profit corporation
Its: Manager

By: ____________________________________
Name: John M. Welsh
Its: Senior Vice President

IN TESTIMONY WHEREOF, Lender has executed this 2nd Amended and Restated Loan Agreement (101 West Main Street, Frisco, CO) as of the day and year first above written.

TOWN OF FRISCO,
a Colorado home rule municipal corporation

(S E A L)

Attest:

____
Stacey Campbell, Town Clerk

By: _________________________
Name: Frederick J. Ihnken
Its: Mayor

IN TESTIMONY WHEREOF, Assignor has executed this 2nd Amended and Restated Loan Agreement (101 West Main Street, Frisco, CO) as of the day and year first above written.

NHPF WEST MAIN, LLC,
a Colorado limited liability company

By: The NHP Foundation,
a District of Columbia non-profit corporation
Its: Managing Member

By: ___________________________________
Name: John M. Welsh
Its: Senior Vice President

EXHIBIT A
LEGAL DESCRIPTION

[TO BE INSERTED]

2nd AMENDED AND RESTATED PROMISSORY NOTE

$4,900,000.00 July ____, 2026

FOR VALUE RECEIVED, **WEST MAIN APARTMENTS LLLP**, a Colorado limited liability limited partnership, located at c/o The NHP Foundation, 1401 H Street NW, Suite 1000, Washington, DC 20005 (the "Borrower"), promises to pay to the order of the **TOWN OF FRISCO**, a Colorado home rule municipal corporation, located at 1 East Main Street, Frisco, Colorado 80443 with a mailing address of P.O. Box 4100, Frisco, Colorado 80443 (the "Lender"), the principal sum of Four Million Nine Hundred Thousand and 00/100 Dollars ($4,900,000.00) (the "Loan"), together with simple interest thereon of five percent (5%) annually from the date hereof until paid as follows. Any terms not otherwise defined herein shall have the meanings ascribed to such terms in the Second Amended and Restated Loan Agreement between Borrower and Lender, dated as of the date hereof, pertaining to the Loan, which assigns the interests of NHPF West Main, LLC, a Colorado limited liability company ("Company"), as borrower, to the Borrower. The Company entered into that certain original Promissory Note dated June 16, 2023, as amended and restated by that certain Amended and Restated Promissory Note dated August 27, 2025 (the "Original Note"), and this 2nd Amended and Restated Promissory Note is made by Borrower, as assignee, to restate and replace the Original Note in its entirety and supersedes the terms and conditions under the Original Note.

The Loan shall mature on the later of (i) the maturity of senior LIHTC permanent mortgage committed at the LIHTC Closing; or (ii) the date that is thirty (30) years from the date of the LIHTC Closing; provided, however, in the instance the LIHTC Closing does not occur by December 31, 2028, then the Loan shall mature (the "Maturity Date"). Interest shall accrue but Borrower shall not be required to make payments of principal or interest until the Maturity Date. On the Maturity Date, the entire principal balance of the Loan, together with any unpaid accrued interest, shall be due and payable in full. Interest and principal on the Loan shall be payable annually from ten percent (10%) of Net Cash Flow (as hereinafter defined), with all payments applied first to accrued but unpaid interest and then to principal; provided, that at time of the LIHTC Closing, if the financial projections for the development of the Improvements to the Property do not project at least Five Hundred Thousand Dollars ($500,000) of aggregate amount of payments to Lender or its affiliates through the end of the tax credit compliance period (as defined in IRC Section 42(i)(1)) of (i) developer fee paid to the Lender or its affiliates pursuant to a development fee agreement or entity operating or partnership agreement entered into as of the LIHTC Closing; and (ii) principal and interest payments on the Loan, then a principal payment shall be due as of the date of any refinancing of the first lien permanent loan in an amount sufficient to provide aggregate payments of (i) developer fee paid to the Lender or its affiliates pursuant to a development fee agreement or entity operating or partnership agreement entered into as of the LIHTC Closing; and (ii) principal and interest payments on the Loan of at least $500,000.

Other than with respect to the payment that shall be due pursuant to the previous sentence, prior to the Maturity Date, the failure to pay annual principal and interest on this Note when Net

Cash Flow is not available shall not constitute an Event of Default under this Note; and, to the extent any such payments otherwise due are not paid as a result of insufficient Net Cash Flow, the deficiency in payment shall be added to the subsequent year's required payment. "Net Cash Flow" for purposes of this Note, means one hundred percent (100%) of the Borrower's cash flow remaining after all necessary and reasonable operating expenses of the Property (including operational expenses, debt payments on other indebtedness, funding reserves, amounts payable to any tax credit investor, and payments of developer fee) have been paid or funds have been set aside for such payment.

The Borrower shall have the right of prepayment either in full or in partial payments, which right shall be without penalty.

Upon non-payment of any interest or principal as and when due under this Promissory Note, or upon default in the performance of or compliance with any of the other covenants or conditions of this Promissory Note, or subject to any applicable notice and opportunity to cure contained in the Second Amended and Restated Loan Agreement or that certain Second Amended and Restated Leasehold Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Leases of even date herewith securing the Note against the Property (the "Deed of Trust"), Environmental Indemnity Agreement by Borrower and The NHP Foundation, a District of Columbia nonprofit corporation (the "Sponsor") for the benefit of Lender (the "Environmental Indemnity"), and Unconditional Guaranty by Sponsor to Lender (the "Guaranty," and together with this Note, the Loan Agreement, and the Environmental Indemnity, the "Loan Documents"), Lender may, at its option, declare the entire principal balance hereunder then unpaid, together with all accrued and unpaid interest thereon, together with any other amounts hereunder or under the Loan Documents to be immediately due and payable and pursue all other remedies set forth in the Loan Documents or at law.

This Note is nonrecourse to Borrower and its partners, and Lender shall look solely to the Property for repayment of the Loan. Notwithstanding the preceding sentence, the Borrower and the Sponsor shall have full recourse and personal liability for, and be subject to, judgments and deficiency decrees arising from and to the extent of any loss or damage suffered or incurred by the Lender as a result of the occurrence of any of the following events: (i) the Borrower fails to pay upon demand after an Event of Default all rents and the amount of all security deposits collected by Borrower from tenants then in residence; (ii) the Borrower fails to apply all insurance proceeds or casualty or condemnation proceeds as required by the Loan Documents; (iii) the Borrower fails to deliver all books and records relating to its operation in accordance with the provisions of the Loan Agreement; (iii) the Borrower engages in any willful act of material waste relating to the Property; (iv) the occurrence of any of the following transfers: (A) any person creates a mechanic's lien or other involuntary lien or encumbrance against the Property and Borrower has not complied with the provisions of the Loan Documents with respect to removal or loaning over for such lien or encumbrance; or (B) a transfer of an interest in the Property other than a Permitted Transfer; (v) any act of fraud or willful misconduct or any criminal act of the Borrower or the Sponsor; (vi) the Borrower's misappropriation of funds; or (vii) the Borrower or the Sponsor voluntarily files for bankruptcy protection under the federal bankruptcy code or is the subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights including an involuntary bankruptcy or other involuntary insolvency proceeding is commenced against the Borrower or the Sponsor.

It is intended that this Note is made with reference to and shall be governed by and construed in accordance with the laws of the State of Colorado. The provisions of this Note shall be binding upon the undersigned, its heirs, executors, administrators and assigns. All of the terms, covenants, conditions, provisions, and agreements of the Loan Documents are made a part of this Note to the same extent, and with the same force and effect, as if they were set forth fully in this Note.

[*The remainder of this page has been left blank intentionally*.]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed by its authorized representative, all on the date and year first above written.

BORROWER:

WEST MAIN APARTMENTS LLLP,
a Colorado limited liability limited partnership

By: NHPF West Main GP, LLC, a Colorado limited liability company, its General Partner

By: The NHP Foundation,
a District of Columbia nonprofit corporation,
its Manager

By: ______________________________
Name: John M. Welsh
Its: Senior Vice President

The terms, conditions, and obligations of this Note are hereby recognized, acknowledged, and accepted by the Lender.

LENDER:

TOWN OF FRISCO,
a Colorado home rule municipal corporation

(S E A L)

Attest:

____
Stacey Campbell, Town Clerk

By: ______________________________
Name: Frederick J. Ihnken
Its: Mayor

STAFF REPORT

TO: MAYOR & TOWN COUNCIL
FROM: THAD RENAULD, TOWN ATTORNEY
JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER
RE: FORWARD PURCHASE AND SALE AGREEMENT FOR A COMMERCIAL CONDO LOCATED AT 101 WEST MAIN STREET
DATE: JUNE 29, 2026

Summary & Background:

Town staff are bringing forth a Forward Purchase and Sale Agreement between the Town of Frisco and West Main Apartments LLLP for the future purchase of the commercial condominium unit located within the affordable housing development currently under construction at 101 West Main Street.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to "preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities." This mission aligns with the Council's strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:

As part of the affordable housing project design, a small commercial unit will be incorporated into the building, as requested by Town Council. The Town will maintain ownership and control of this commercial space to support future community, civic, or economic development purposes. The proposed agreement provides the mechanism for the Town to acquire the unit upon completion of construction.

The Town will purchase the commercial unit for the greater of:

- $500,000; or
- The final certified construction cost of the commercial unit, subject to a maximum purchase price of $750,000.

The Town will deposit $500,000 into an escrow account upon execution of the agreement. If the final purchase price exceeds $500,000, the Town will deposit an additional amount prior to closing. The escrow funds will remain protected until closing and will be refunded to the Town if the transaction does not occur under the terms of the agreement.

The developer is required to substantially complete the commercial unit by August 1, 2028. If delays occur, closing may be postponed until completion but must occur no later than December 31, 2028. If the commercial unit is not delivered by December 31, 2028, the Town may terminate the agreement without further obligation. Prior to closing, the developer must provide title insurance and secure release of any construction financing liens affecting the commercial unit. Upon closing, ownership of the commercial unit will be conveyed to the Town by deed and released from the existing ground lease structure.

Financial Impact:

The agreement authorizes an expenditure between $500,000 and $750,000 for acquisition of the commercial unit. Funds will be held in escrow until closing and applied toward the purchase price. Town Council under Resolution 24-28 approved the purchase of the commercial condo.

Alignment with Strategic Plan:

The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:

- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:

Staff requests the Town Council review the Forward Purchase and Sale Agreement.

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 – Forward Purchase and Sale Agreement

TOWN OF FRISCO

AND

WEST MAIN APARTMENTS LLLP

FORWARD PURCHASE AND SALE AGREEMENT

Dated as of __________, 2026

THIS FORWARD PURCHASE AND SALE AGREEMENT, dated as of ________________, 2026, (the "Effective Date") and any amendments hereto made in accordance herewith (as from time to time amended and supplemented in accordance herewith, this "Agreement"), is made by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation (the "Town" or "Buyer"), WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership (together with any permitted successors and/or assigns, "Partnership" or "Seller"), and Land Title Guarantee Company ("Escrow Agent").

Recitals

This Agreement is made with respect to the following facts:

A. The Town is a municipal corporation and political subdivision duly organized and existing under the Constitution and laws of the state of Colorado and its home rule charter;

B. The Partnership is the ground lessee under that certain Amended and Restated Ground Lease with the Town, dated June ____, 2026, and holder of the leasehold interest in that certain real property that is commonly known as 101 Main Street, Frisco, Colorado and that is legally described in Exhibit A hereto (the "Property"), which Exhibit is incorporated herein by reference;

C. Under the Second Amended and Restated Development Agreement Between The Town of Frisco and NHPF West Main, LLC, dated as of June 25, 2024, and assigned to the Partnership of even date herewith, the Property is to be developed for affordable housing purposes in accordance with the Low Income Housing Tax Credit program ("LIHTC") created under the federal Tax Reform Act of 1986 (the "Project");

D. The Project will include a commercial unit containing 623 square feet (the "Commercial Unit") and certain other improvements necessary for the completion of the Project and the Commercial Unit, pursuant to that certain Declaration for 101 W. Main Small Planned Community, recorded as of July ____, 2026 at Reception No. ___________ ("SPC Declaration"), and the Preliminary Planned Community Map, recorded as of July ____, 2026 at Reception No. ___________ ("SPC Map"), each recorded in the real property records of Summit County, Colorado.

E. The Partnership has agreed to sell, and the Town has agreed to buy the Commercial Unit upon Substantial Completion (as defined herein) on the terms and conditions stated below.

Agreement

NOW, THEREFORE, in consideration of the premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 DEFINITIONS.

Section 1.01 Definitions. As used in this Agreement, the following terms will have the following meanings:

"Architect" means Allen-Guerra Architecture.

"Agreement" has the meaning set forth in the first paragraph of this Agreement. References to Sections and Exhibits are to this Agreement unless otherwise qualified.

"Closing Date" means the date on or prior to the Completion Deadline, as agreed to by the parties.

"Construction Contract" means the AIA Document A102-207 by and between the Partnership and General Contractor dated as of June [____], 2026

"Environmental Laws" means all federal, state and local environmental, health and safety statutes, as may from time to time be in effect, including but not limited to federal laws such as the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9602, et seq., the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 960l(20)(D), the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act Amendments of 1977, 33 U.S.C. §§ 1251, et seq. ("CWA"), the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, et seq., the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., and any and all federal, state and local rules, regulations, authorizations, judgments, decrees, concessions, grants, franchises, agreements and other governmental restrictions and other agreements relating to the environment or to any pollutants, as may from time to time be in effect.

"General Contractor" means Martin-Harris Construction, LLC.

"Limited Partner" means, collectively, U.S. Bancorp Community Development Corporation, a Minnesota corporation, and USB Colorado State Investor I, LLC, a Missouri limited liability company, as the respective federal and state tax credit partners of the Partnership.

"Notice Address" means the appropriate address for notice set forth below, as amended from time to time:

Town: Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Town Manager

With a Copy to:

Thad W. Renaud, Esq.
Murray Dahl Beery & Renaud LLP
710 Kipling Street, Suite 300
Lakewood, CO 80215

Partnership: c/o The NHP Foundation
1401 H Street, NW, Suite 1000
Washington, DC 20005
Attn: John Welsh

With a copy to:

New Communities Law PLLC
1624 Market Street, Suite 400
Denver, CO 80202
Attn: Ben Doyle

U.S. Bancorp Community Development Corporation
U.S. Bancorp Impact Finance
505 North Seventh Street, 10th Floor
Mail Code: SL-MO-T10F
St. Louis, MO 63101
USB Project No. 31728
Attn: Director of LIHTC Asset Management

USB Colorado State Investor I, LLC
c/o U.S. Bancorp Impact Finance
505 North Seventh Street, 10th Floor
SL-MO-T10F
St. Louis, MO 63101
USB Project No: 31728
Attn: Director of LIHTC Asset Management

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Jill Goldstein

U.S. Bank National Association
505 North Seventh Street
St. Louis, MO 63101
SL-MO-T10F
Attn: Director of LIHTC Asset Management

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Alison Seaborne

"Partnership Agreement" means that certain Amended and Restated Agreement of Limited Liability Limited Partnership of the Partnership and dated as of June [___], 2026, as may be amended from time to time.

"Permitted Exceptions" shall mean only those exceptions to title to the Commercial Unit that are approved by the Town prior to the Closing Date.

"Project" has the meaning set forth in Recital C above.

"Senior Lender" means U.S. Bank National Association, a national banking association, as the first priority lien holder of the Project.

"Senior Loan Documents" means those construction loan documents entered into by the Partnership and Senior Lender to facilitate the construction and completion of the Project.

"Substantial Completion" shall mean the date on which Seller delivers to Buyer a statement certified by the Architect in the form of AIA G704 confirming that Seller has substantially completed (as that term is used in AIA G704) construction of the Project, sufficient to permit Seller to obtain a temporary certificate of occupancy for the Commercial Unit. Substantial Completion shall not include, and shall not require, the building or completion of the exterior or interior residential improvements within the remaining portion of the Project that is not the Commercial Unit.

"Title Commitment" has the meaning set forth in Section 2.01.

"Title Company" has the meaning set forth in Section 2.01.

"Title Policy" means a 2021 form ALTA Owner's title insurance policy issued by the Title Company, in the amount of the Purchase Price, dated as of the Closing Date and reflecting Seller as the leasehold interest holder of the Commercial Unit, subject only to the Permitted Exceptions and such other easements, rights-of-way and exceptions as may be agreed upon by the parties.

SECTION 2 ACQUISITION AND CONVEYANCE OF THE COMMERCIAL UNIT. Town agrees to buy the Commercial Unit from the Partnership, and the Partnership agrees to sell, the Commercial Unit on the terms and conditions set forth in this Agreement.

Section 2.01 Pre-Conditions to Closing:

(a) Prior to the Effective Date, Seller prepared and submitted to Buyer, for review and approval, Seller's design drawings for the Project, which includes the Commercial Unit ("Design Drawings"). By signing the Agreement, Buyer acknowledges it has approved the Design Drawings. Prior to the Effective Date, Seller prepared and submitted to Buyer, for review and approval, construction drawings for the Project ("Plans and Specifications"). By signing this Agreement, Buyer acknowledges it as approved the Plans and Specifications.

(b) Notwithstanding anything herein to the contrary, Seller shall be solely responsible for the construction of the Project, including the Commercial Unit, as shown in the Plans and Specifications. The parties agree that the Plans and Specifications shall not be modified by either party except (i) by Seller to the extent of any modifications, amendments, or additional thereto are required by a governmental authority to comply with local, state or federal laws, which do not adversely alter the design, structure, function, systems, access, or visibility of the Commercial Unit, as also approved, if necessary, by the Senior Lender and Limited Partner, or (ii) such changes that are required by the Senior Loan Documents and/or the Partnership Agreement that do not adversely impact the Commercial Unit.

(c) Seller's obligations hereunder are conditioned on the Evidence of Completion (as defined below) of the Commercial Unit on or before August 1, 2028 ("Completion Deadline"). In the event Seller fails to deliver the Commercial Unit by the Completion Deadline, Buyer Closing of the Commercial Unit shall be postponed until such time as Substantial Completion of the Commercial Unit occurs, but in no event later than December 31, 2028. In the event that Seller fails to deliver the Commercial Unit on or before December 31, 2028, Buyer may terminate this agreement without further obligation to Seller whatsoever. Buyer may periodically inspect the status of construction subject to Seller and General Contractor's reasonable site safety requirements.

(d) Seller shall deliver to Buyer notice of Substantial Completion no less than five (5) days after Substantial Completion. Concurrently with the delivery of such notice of Substantial Completion, Seller shall deliver to Buyer (i) a written statement from the General Contractor in the form of AIA G-702 that the Commercial Unit has been substantially completed in accordance with the approved Plans and Specifications (ii) all items required set forth in the definition of Substantial Completion, and (iii) the SPC Map will show the square footage of the Commercial Unit (collectively, the "Evidence of Completion").

(e) It is understood and agreed that except as otherwise expressly set forth in this Agreement: (i) Buyer is buying the Commercial Unit, "as is" and "where is," and with all faults and defects, latent or otherwise; (ii) Seller is making no representations or warranties, express or implied, by operation or law or otherwise, with respect to the quality, physical condition or value of the Commercial Unit, its habitability, suitability, merchantability or fitness for a particular purpose, the status of any off-site improvements, or agreements with any municipality or government authority; (iii) Seller makes no representations or warranties whatsoever, express or implied, by operation of law or otherwise, with respect to the presence or absence of conditions on the Commercial Unit or off-site of the Commercial Unit that could give rise to a claim for personal injury, property or natural resource damages, or the presence of hazardous materials or substances on, under or about the Commercial Unit (including ground water and soils); and (iv) Seller makes no representation or warranty whatsoever, express or implied, by operation of law or otherwise, with respect to the quality, suitability or fitness for a particular purpose of the Commercial Unit or any adjacent properties. Except as expressly set forth in this Agreement, Buyer shall rely solely on Buyer's own inspections, investigations and due diligence with respect to all aspects of the Commercial Unit, including but not limited to, the physical condition thereof, all issues related to the properties surrounding the Commercial Unit, all access issues related to the Commercial Unit, and all entitlements, permits and licenses necessary or desirable to the development, use, operation and occupancy of the Commercial Unit, and Buyer's decision to proceed with the purchase of the Commercial Unit. Seller shall not be responsible for any failure on the part of Buyer to investigate the conditions and features related thereto, nor for any verbal representation or statement, including any representation or statement by any real estate broker or sales agent, or any other purported agent, representative, contractor, consultant, trustee, beneficiary, representative or employee of Seller. Except as otherwise expressly set forth in this Agreement, Buyer, for itself and its members, managers, principals, beneficiaries, legal representatives, successors and assigns, waives all rights to recover from, and forever releases and discharges, Seller, Seller's predecessors or affiliates, the members, managers, employees and agents of each of them, and their respective heirs, successors, personal representatives, attorneys and assigns from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs) whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (w) the physical conditions of the Commercial Unit including, without limitation, all water systems, grading, compaction, soils conditions, structural conditions, or other improvements or alterations heretofore made to the Commercial Unit, the environmental condition of the Commercial Unit and hazardous substances, materials, or pollutants on, under or about the Property or Commercial Unit, or (x) any laws related to the environmental condition of the Commercial Unit. The terms of this subparagraph shall expressly survive closing.

(f) From the Effective Date through the Closing Date, Seller shall obtain and maintain all licenses, permits and approvals necessary to Seller's leasehold interest, operation and improvement of the Project and Commercial Unit, as well as insurance affecting the Project, the Commercial Unit, and other improvements related to the Project. Seller shall require the General Contractor to maintain the insurance requirement pursuant to the Construction Contract. Seller need not continue to maintain property insurance that upon imposition of the Small Planned Community is maintained by the owner's association, if any.

(g) Prior to Closing Date, Seller shall have provided the Town with any and all information and documents, including but not limited to title commitments, environment assessments, certifications regarding environmental conditions, estoppel certificates, appraisals, representations, warranties, all leases currently in effect, subordination agreements, or indemnification agreements that may be required by the Town with respect to the Commercial Unit, or encumbrances on title to the Commercial Unit; Seller understands and agrees that any representation, warranty or certification that Senior Lender or Limited Partner may require from the Town with respect to the

Commercial Unit will also be provided by the Seller to the Town with respect to the Commercial Unit.

(h) Prior to Closing Date, Seller shall deliver to the Town, at the Seller's expense, a Title Commitment issued by Land Title Guarantee Company in Frisco, Colorado ("Title Company"), covering the Commercial Unit, together with legible copies of all exception documents disclosed by such Commitment. Such Title Commitment shall commit to insure Title to the Commercial Unit in the Town in the amount of the Purchase Price (as defined herein) and subject only to the Permitted Exceptions. On or before the Closing Date, the Seller shall cause such Title Commitment to be endorsed so as to change the effective date to a date no more than one week prior to the Closing Date. Seller shall pay the title insurance premium at closing, and the Seller shall have the Title Policy delivered to the Town as soon as practicable after the Closing Date. If required by the Title Company to delete the standard preprinted exceptions set forth in the Title Commitment, and if the Town desires that such preprinted exceptions be deleted, the Seller will obtain and pay for an ALTA survey of the Property, including the Commercial Unit, and provide copies of the same to the Town and the Title Company at such time prior to the Closing Date as may be required by the Title Company.

Section 2.02. Closing. The following will occur on or prior to the Closing Date, each being a condition precedent to the others:

(a) The Seller shall execute, have acknowledged and deliver to the Town: (i) a Special Warranty Deed (the "Deed") conveying any and all interests in and to the Commercial Unit to the Town, free and clear of all taxes and subject only to such liens, encumbrances and other matters as may make up the Permitted Exceptions; (ii) a certification that all representations and warranties made by the Seller in this Agreement are true, accurate and complete at the time of closing; (iii) an affidavit certifying that the Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code of 1986, as amended, and the corresponding income tax regulations; and (iv) such affidavits and agreements to or with Title Company as Title Company shall require to issue to the Town a policy of owner's title insurance.

(b) The parties acknowledge that that the Commercial Unit is encumbered by the lien of the Senior Loan Documents. As a condition to Closing, the Seller shall have obtained from the Senior Lender a partial release of the lien of the Senior Loan Documents as to the Commercial Unit, which partial release shall be recorded simultaneously with the Deed. The Senior Lender shall have no obligation to deliver such partial release unless and until all amounts required to be paid to the Senior Lender from the Purchase Price have been irrevocably deposited with the Escrow Agent for disbursement to the Senior Lender. In no event shall the Senior Lender's lien on the Commercial Unit be released, subordinated, or extinguished except upon the Senior Lender's express written consent and the satisfaction of all conditions set forth in the Senior Loan Documents for a partial release of collateral.

(c) Town will deliver to the Seller, in funds that comply with all applicable Colorado laws, but including only electronic transfer funds, certified check, savings and loan teller's check or a cashier's check, the greater of (i) Five Hundred Thousand and No/100 Dollars ($500,000.00) or the final amount of the Commercial Unit as set forth in the final cost certification issued by Seller's general contractor (the "Purchase Price"), but in no event to exceed $ 750,000.00;

(d) The Town will release the Commercial Unit from the Ground Lease and execute any documents related to such termination and arrange for their filing in the real property records after the Deed to the Town has been recorded;

(e) The Town and the Seller will each pay one-half (50%) of the Title Company's closing costs and will execute settlement sheets, closing instructions, and such other agreements and documents (with customary prorations in accordance with local practice for commercial property transactions) as may be required to implement and to carry out the intent of this Agreement;

(f) Seller will assign to Buyer, on a non-exclusive basis, all of Seller's rights to General Contractor's construction guarantees and warranties under the Construction Contract, if any, with respect to the Project but only to the extent that they may relate to or encompass the Commercial Unit, together with guaranties and warranties with respect to any equipment solely and exclusively appurtenant to the Commercial Unit (such as HVAC equipment);

(g) The Title Company will issue the Title Policy to the Town, or unconditionally commit to so issue the Title Policy promptly following closing;

(h) On or before the Effective Date, the Town shall deposit the Purchase Price (or, if the final Purchase Price has not yet been determined as of the Effective Date, the sum of Five Hundred Thousand and No/100 Dollars ($500,000.00)) (the "Escrow Deposit") with Escrow Agent, to be held in an interest-bearing escrow account pursuant to those certain escrow instructions attached hereto and incorporated herein as Exhibit B ("Escrow Instructions"). If the final Purchase Price as determined pursuant to Section 2.02(c) exceeds the initial Escrow Deposit, the Town shall deposit the excess amount with the Escrow Agent no later than ten (10) business days prior to the Closing Date.

(i) The Escrow Deposit (together with all interest earned thereon) shall be disbursed by the Escrow Agent at Closing as follows: first, to the Senior Lender in an amount sufficient to satisfy all amounts then due or outstanding under the Senior Loan Documents (or such lesser amount as the Senior Lender may direct in writing); and second, the balance, if any, to the Seller or as the Seller may direct. In the event Closing does not occur by the Completion Deadline, the Purchase Price plus any and all interest will be fully refunded to the Town upon the written consent of both the Town and Seller. Notwithstanding the foregoing, the Escrow Deposit shall not be refunded to the Town unless and until: (i) Senior Lender has provided its written consent, which shall not be unreasonably withheld, or (iii) the Senior Loan is paid down in an amount equal to the Escrow Deposit.

Section 2.03 Risk of Loss If, prior to the Closing Date, the Commercial Unit or any part thereof is damaged or destroyed by fire, earthquake, flood or other casualty, and the rebuilding or restoration of the Commercial Unit is reasonably likely to take more than 24 months, then the Town may at its option terminate this Agreement by written notice to the Seller, Senior Lender and Limited Partner sixty (60) days after Seller provides notice to Buyer of such casualty. In the event of such termination by the Town, the Town and the Seller shall have no remaining obligations hereunder whatsoever. In the event that the Town fails to terminate this Agreement as a result of such casualty, the Town agrees that it is purchasing the Commercial Unit in its then "as is" condition as a result of such casualty. In the event the Seller elects not to rebuild or restore such casualty, which election must be made by Seller within thirty (30) days of such casualty and subject to those terms and obligations set forth in the Senior Loan Documents and the Partnership Agreement, then this Agreement shall automatically terminate upon Seller's written notice to Buyer that Seller does not intend to rebuild or restore such damage.

SECTION 3 REPRESENTATIONS AND WARRANTIES AND CONDITIONS OF BUYER'S PURCHASE.

Section 3.01 Representations and Warranties by Seller. Seller represents and warrants that:

(a) Seller holds a leasehold interest in the Property. Seller is a duly organized and validly existing limited liability limited partnership under the laws of the State of Colorado that it is not in violation of any provisions of its governing documents or the laws of the State of Colorado, and that it has the power and legal right to enter into this Agreement and that has duly authorized the execution, delivery and performance of this Agreement by proper action;

(b) The consummation of the transactions contemplated by this Agreement will not violate any provisions of the governing documents of Seller or constitute a default or result in the breach of any term or provision of any contract or agreement to which Seller is a party or by which it is bound;

(c) To Seller's knowledge, there is no litigation, proceeding or investigation contesting the power or authority of the Seller or its officers with respect to the Project or this Agreement, and Seller is unaware of any such litigation, proceeding or investigation that has been threatened; and

Section 3.02 Representations and Warranties by the Town. The Town represents and warrants that:

(a) The Town is a home rule municipal corporation and political subdivision validly existing under the laws of the State of Colorado;

(b) The Town has the power to enter into and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder;

(c) To the Town's knowledge, there is no litigation, proceeding or investigation contesting the power or authority of the Town or its officials to enter into or consummate the transactions contemplated by this Agreement, and the Town is unaware of any such litigation, proceeding or investigation that has been threatened; and

(d) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the Town or to the Town's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town.

Section 3.03 Condition of Buyer's Purchase of the Commercial Unit. Nothing herein shall constitute a multiple fiscal year financial obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, Buyer's obligations under this Agreement in fiscal years after the fiscal year during which this Agreement was approved, are subject to annual appropriation by the Town Council of the Town of Frisco, Colorado. Any failure of the Town Council annually to appropriate adequate monies to finance Buyer's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to Seller of any failure to appropriate such adequate monies. In the event of termination of the Agreement for a failure of appropriation, the parties shall proceed in accordance with Section 5 below.

SECTION 4 RESTRICTIONS ON ASSIGNMENT AND TRANSFER. Seller will not assign its rights or delegate its duties and obligations pursuant to this Agreement without the prior written consent of the Town, which consent may be withheld in the Town's sole and absolute discretion, subject only to such transfers set forth in the Senior Loan Documents and the Partnership Agreement which shall not require Town consent. Except as expressly provided herein, any purported assignment without consent of the Town will be null and void. As a condition to granting consent, an assignee will expressly assume in writing the obligations of Seller hereunder and upon any such full assumption of obligations, Seller shall be released from any and all obligations hereunder only if Seller no longer has an ownership interest in the Commercial Unit. Any sale, transfer, assignment, pledge or hypothecation of an interest in the Seller that results in a change in control of that entity (other than a change in control mandated by the Limited Partner to the Partnership Agreement) will constitute an assignment of this Agreement. However, Seller shall have the right to assign or transfer its interest in the Property, including the Commercial Unit, to any entity that it controls.

Notwithstanding anything in this Section 4 to the contrary, any transfer, assignment, or change of control of the Seller or the Seller's interest in this Agreement or the Commercial Unit that results from or is made in connection with (a) the exercise by the Senior Lender of any right or remedy under the Senior Loan Documents, including without limitation foreclosure (whether judicial or non-judicial), deed-in-lieu of foreclosure, appointment of a receiver, or the exercise of any power of sale, or (b) any transfer of the Seller's interest in the Commercial Unit to the Senior Lender, its designee, or a purchaser at a foreclosure sale, shall not require the consent of the Town and shall not constitute a default under this Agreement. Upon any such transfer, the transferee shall succeed to all of the Seller's rights under this Agreement, and the Town shall recognize such transferee as the Seller hereunder and shall perform its obligations under this Agreement in favor of such transferee.

SECTION 5 INDEMNIFICATION OF TOWN

Section 5.01 Indemnified Parties. Seller releases from and covenants and agrees that the Town, its affiliated entities, and its governing bodies' members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Commercial Unit or any other loss, cost expense, or penalty. Seller's indemnification obligation does not apply to the extent the Town is determined to have committed willful or wanton misconduct.

Section 5.02 Town Indemnification. Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, Seller agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Seller (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; including, without limitation, any pecuniary loss or penalty that arise from any encumbrance on the Project, whether or not such encumbrance was one of the Permitted Exceptions.

Seller shall defend, indemnify and hold harmless the Town and Town's Related Parties against and from any and all liability, claim of liability or expense arising out of or in any way connected with any lease or sublease or similar use agreement(s) to which the Partnership and the Town are not parties, and from and against all expenses and liabilities incurred in connection with any claim or any action or proceeding brought thereon (including the reasonable fees of attorneys, investigators and experts), all regardless of whether such claim is asserted during the term or after the expiration of this Agreement or any earlier termination of this Agreement, but excluding, however, the portion of any liability, claim of liability or expense caused by the gross negligence or willful misconduct of the Town, its employees or agents. As used herein, "**Town's Related Parties**" shall mean and refer to Landlord's officers, directors, affiliates, agents, contractors, volunteers and employees, and their respective successors and assigns.

Section 5.03 Town Obligations. All covenants, stipulations, promises, agreements and obligations of the Town contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Town and not of any governing body member, officer, agent, servant or employee of the Town.

Section 5.04 Attorneys' Fees. If Seller shall default under any of the provisions of this Agreement, and the Town shall employ attorneys or incur other reasonable expenses for the enforcement of performance or observance of any obligation or agreement on the part of Seller contained in this Agreement, Seller will within sixty (60) days of request therefor reimburse the Town for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 5.05 Survival. All provisions of this Section 5 shall survive the termination of this Agreement.

SECTION 6 MISCELLANEOUS

Section 6.01 Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when: (i) given by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, addressed to the appropriate address under the definition of Notice Address above or at such other address or addresses as any party hereto designates in writing to the other party hereto; and (ii) copied to the e-mail address set forth under the definition of "Notice Address" above, if an e-mail address is so set forth. A notice certificate or other communication given hereunder shall be effective as of the date of delivery if given by hand or overnight delivery, and seven days following the date on which it was deposited in the U.S. Mail if given by certified or registered mail.

Section 6.02 Waiver. No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, will constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either party by giving notice to the other party may, but will not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver will affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

Section 6.03 Attorneys' Fees. In any proceeding brought to enforce the provisions of this Agreement, the court shall award the party that substantially prevails on a contested material issue its reasonable attorneys' fees, actual court costs and other expenses incurred in connection with said material issue.

Section 6.04 Titles of Sections. Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

Section 6.05 Town Not a Partner; Seller Not Town's Agent. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, the Town will not be deemed or constituted a partner of or in a joint venture with Seller, Seller will not be the agent of the Town, and the Town will not be responsible for any debt or liability of Seller.

Section 6.06 Applicable Law; Binding Effect. The laws of the State of Colorado will govern the interpretation and enforcement of this Agreement. This Agreement will be binding on and inure to the benefit of the parties hereto, and their successors and assigns.

Section 6.07 Further Assurances. The parties hereto agree to execute such documents, and take such action, as may be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

Section 6.08 Time of Essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 6.09 Counterparts. This Agreement may be executed in several counterparts, each of which together will be an original and all of which will constitute but one and the same instrument.

Section 6.10 Non-Liability of Town Officials and Employees. No council member, commissioner, board member, official, employee, agent or consultant of the Town will be personally liable to Developer in the event of breach or Event of Default by the Town or for any amount that may become due to Developer under the terms of this Agreement.

Section 6.11 Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

Section 6.12 Jointly Drafted; Rules of Construction. The parties hereto agree that this Agreement was jointly drafted, and, therefore, waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

Section 6.13 No Third-Party Beneficiaries. No third-party beneficiary rights are created in favor of any person not a party to this Agreement it being the intent of the parties hereto that they be and remain the sole beneficiaries of this Agreement.

Section 6.14 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter,

Section 6.15 Default.

(a) In the event of Seller's default, material breach or material misrepresentation of any fact under the terms of this Agreement, the Town, at its option and notwithstanding any other term or provision of this Agreement, may terminate this Agreement by written notice to Seller. In the event of a termination pursuant to this paragraph, the Seller and the Town shall have no further liability or obligation to each other in connection with this Agreement, except as to such terms and conditions which expressly survive the termination of this Agreement.

(b) In the event of the Town's default, material breach or material misrepresentation of any fact under the terms of this Agreement, the Seller, at its option and notwithstanding any other term or provision of this Agreement, may terminate this Agreement and, thereafter, shall be entitled to pursue its remedies at law or in equity; provided, however, that Seller waives any right to file and maintain an action against the Town for specific performance of this Agreement.

Section 6.16 Funder Cure Rights.

(a) Buyer shall simultaneously provide any notice of Seller's default to Senior Lender and Limited Partner (collectively, "Funders"). Each of the Funders shall have the right, but not the obligation, to cure Seller's default within 30 days after such Funder's receipt of the default notice, and if such default is reasonably incapable of being cured within such 30-day period, then the Funder(s) shall have such additional time as shall be reasonably necessary to accomplish such cure, provided that such Funder(s) commence such cure during such 30-day period, and thereafter prosecutes such cure diligently to completion.

(b) Buyer hereby acknowledges and agrees Senior Lender is making a construction loan to Seller (the "Construction Loan"). Senior Lender's mortgage and all amendments, modifications, extensions and renewals thereof shall unconditionally be and remain at all times a lien or charge on the Property prior and superior to the lien or charge of the Buyer under this Agreement. Buyer acknowledges and agrees that its consent is not required, and it has no right to review or approve any advances of the Construction Loan made by Senior Lender. Until such time as the Construction Loan has been paid in full, this Agreement shall not be amended, modified or terminated without the prior written consent of Senior Lender. Upon the occurrence of an event of default under the Construction Loan, and in the event Senior Lender elects to assume Buyer's rights and obligations under this Agreement, the Buyer shall attorn to Senior Lender, and each party's respective obligations under this Agreement shall run in favor of Senior Lender. Senior Lender is an intended third party beneficiary of this Agreement, and Senior Lender may enforce the terms hereof in any court of competent jurisdiction.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Town has caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and Seller has caused these presents to be executed by its duly authorized officer, as of the date first above written.

TOWN OF FRISCO

(SEAL)

Attest:

____
Stacey Campbell Town Clerk

____
Frederick J. Ihnken, Mayor

STATE OF COLRADO)
) ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me as of the _____ day of _________, 2026, by Frederick J. Ihnken, as Mayor, and Stacey Campbell, as Town Clerk, of the Town of Frisco, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

____
Notary Public

My Commission Expires: __________________________

PARTNERSHIP:

West Main Apartments LLLP
a Colorado limited liability limited company

By: NHPF West Main GP, LLC, a Colorado limited liability company, its General Partner

By: The NHP Foundation,
a District of Columbia nonprofit corporation,
its Managing Member

By: ____________________________
John Welsh, Senior Vice President

STATE OF COLORADO)
) ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me as of the _____ day of __________, 2026, by John Welsh, Senior Vice President, The NHP Foundation, a District of Columbia nonprofit corporation, as managing member of NHPF West Main, LLC, a Colorado limited liability company, as general partner of West Main Apartments LLLP, a Colorado limited liability limited partnership.

WITNESS my hand and official seal.

____
Notary Public

My Commission Expires: _________________________

ESCROW AGENT:

LAND TITLE GUARANTEE COMPANY

By:
Name:
Title:

STATE OF COLORADO)
) ss
COUNTY OF ________)

The foregoing instrument was acknowledged before me as of the _____ day of __________, 2026, by _______________ as______________ of Land Title Guarantee Company.

WITNESS my hand and official seal.

____
Notary Public

My Commission Expires: _________________________

Exhibit A

LEGAL DESCRIPTION OF THE COMMERCIAL UNIT

[TO BE INSERTED]

[Commercial Unit]

EXHIBIT B

ESCROW INSTRUCTIONS

1. Delivery and Release of Escrow Deposit. The Escrow Deposit shall be deposited and released pursuant to the terms of Section 2 of the Agreement.

2. Reliance. The Escrow Agent may rely on any writing or instrument or signature that the Escrow Agent believes in good faith to be genuine; and assume the validity and accuracy of any statement or assertion contained in a writing or instrument signed by either party.

3. Laws Relating to Unclaimed Funds. The Town and Seller acknowledge that unclaimed funds may be paid to the State of Colorado pursuant to unclaimed property laws. If the Escrow Agent pays any Escrow Deposit pursuant to unclaimed property laws, the Escrow Agent will be relieved from all further responsibility under this Agreement and will not be liable to either party if the payment was made according to unclaimed property law.

4. Interest on Escrow Deposit. The Town shall provide the Escrow Agent with a completed W-9 and any other tax form required by any governmental agency. The Escrow Agent shall invest the Escrow Deposit in an interest-bearing money market account. Interest earned will inure to the Town's benefit; provided, however, such interest earned shall be included as the Purchase Price and paid in accordance with Section 2.02(i). The Escrow Agent is not responsible for maximizing the yield on the Escrow Deposit and will not be liable for loss of funds due to bank failure, suspension or cessation of business, or any action or inaction on the part of the bank or other institution.

5. Fees and Expenses. Seller shall reimburse the Escrow Agent in full for all costs, expenses, charges, fees, or other payments the Escrow Agent makes in performing its duties and obligations under this Agreement. The Escrow Agent may reimburse itself for fees or expenses from the Escrow Deposit as long as the resulting Escrow Deposit principal balance is not less than the required amount(s).

The Escrow Agent may withhold any fees or expenses from any disbursement or distribution of Escrow Deposit to any party or upon distribution to the clerk of the court if an interpleader action has been filed with a court of competent jurisdiction.

6. Non-Liability. The Escrow Agent will not be liable for any mistakes of fact, errors of judgment, or for any acts or omissions unless the mistake, error, act, or omission is caused by the Escrow Agent's willful misconduct or gross negligence. The Escrow Agent will not be liable for any taxes, assessments, or other governmental charges levied or assessed on the Escrow Deposit or any income the Escrow Deposit generates. The Escrow Agent may rely on the advice of counsel and statements of accountants, brokers, or other persons the Escrow Agent reasonably believes to be expert in the matters on which they are consulted.

7. Indemnity of Escrow Agent. Seller and Town shall indemnify the Escrow Agent for and hold it harmless against any and all liability it incurs related to this Agreement, or in connection with the Escrow Agent's performance of its duties under this Agreement, except for

the Escrow Agent's own willful misconduct or gross negligence, and reimburse the Escrow Agent from separate funds for all its out-of-pocket expenses including attorneys' fees and court costs incurred pursuant to this Agreement.

8. Request for Written Instructions. The Escrow Agent may request the Seller and the Town to provide written instructions concerning the propriety of a proposed distribution of the Escrow Deposit or other action. If the Seller and the Town fail to provide joint written instructions within a reasonable amount of time, after written request, the Escrow Agent may take action, or refuse to act, as it deems appropriate and will not be liable for taking such action or refusing to act in the absence of written instructions.

If the Escrow Agent determines the terms of this Agreement have been complied with, then the Escrow Agent may disburse any funds, distribute documents, or take other action without specific further written instructions from any party.

9. Disputes and Interpleader. If a dispute arises between the Seller and the Town concerning the Escrow Agent's duties under this Agreement which the parties cannot resolve, or if any party fails for any reason to fully receipt and acquit the Escrow Agent in writing, the Escrow Agent may refuse to carry out escrow instructions or to deliver any funds or property in its hand pursuant to this Agreement to anyone. The Escrow Agent may continue, without liability, to refrain from acting and refuse to act (i) until all the rights of the claimants have been finally adjudicated by a court having jurisdiction, after which the Escrow Agent shall act in conformity with the adjudication; or (ii) until all differences have been settled by agreement and Escrow Agent has been notified and directed in writing signed jointly or in counterpart by the parties, at which time Escrow Agent shall act in compliance with their instructions. The Escrow Agent may interplead the Escrow Deposit into a court of competent jurisdiction at the parties' expense.

10. Resignation. The Escrow Agent may resign at any time by giving written notice to the Seller and the Town, which resignation will be effective thirty (30) days after the Escrow Agent gives written notice. Once the Seller and the Town appoint a new escrow agent or custodian, the prior Escrow Agent shall, after retaining its accrued fees and expenses, deliver the Escrow Deposit to the new escrow agent or custodian as directed and will be relieved all liability that may arise after delivering the Escrow Deposit to the new escrow agent or custodian.

STAFF REPORT

TO: MAYOR & TOWN COUNCIL

FROM: THAD RENAULD, TOWN ATTORNEY
JAMES GORHAM, ECONOMIC DEVELOPMENT MANAGER

RE: ASSIGNMENT AND ASSUMPTION OF SECOND AMENDED & RESTATED DEVELOPMENT AGREEMENT FOR 101 WEST MAIN

DATE: JUNE 29, 2026

Summary & Background:

Town staff are bringing forth an Assignment and Assumption of Second Amended & Restated Development Agreement for 101 West Main Street, between the Town of Frisco, West Main Apartments LLLP, and NHPF West Main LLC, for the affordable housing project located at 101 West Main Street for Town Council consideration.

The Town of Frisco (Town) has been working with the NHP Foundation (NHPF) since early 2023 when staff from NHPF approached Town staff and Council on affordable housing opportunities in Frisco. The mission of NHPF is to "preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, and beneficial to their communities." This mission aligns with the Council's strategic plan to support a thriving economy by increasing workforce housing and enhancing community inclusivity by offering a variety of housing types to support year-round residents.

The Town is currently working with NHPF on two affordable housing projects, located at 101 W Main and 602 Galena. Recognizing the strong need for all housing types and rental rates within Frisco, the Town has focused on ensuring that the two projects provide a range of affordable housing options to the community.

The 101 W Main project is projected to move forward in 2026 with 52 rental units at an income range of 30%, 50%, & 80% of the Summit County Area Median Income.

Analysis:

The Town of Frisco has been requested to approve an Assignment and Assumption of the Second Amended and Restated Development Agreement for the 101 West Main Apartments affordable housing project. The agreement transfers all rights, title, and interest under the existing Development Agreement from NHPF West Main, LLC to West Main Apartments LLLP, the entity that will own and operate the project.

The proposed assignment is part of the project's ownership and financing structure and is intended to align the Development Agreement with the entity responsible for the development, ownership, and long-term operation of the project. Under the agreement, West Main Apartments LLLP assumes all obligations and responsibilities of NHPF West Main, LLC arising on or after the effective date of the assignment. The Town's consent is required pursuant to Section 10 of the Development Agreement.

Approval of the assignment does not modify the substantive terms, conditions, or obligations contained in the Development Agreement. Other than replacing the original developer entity with the project ownership entity, the Development Agreement remains in full force and effect. The assignment is administrative in nature and facilitates the continued development, financing, and operation of the 101 West Main Apartment project.

Financial Impact:
Approval of the assignment does not require the expenditure of Town funds and does not create any additional financial obligations for the Town.

Alignment with Strategic Plan:
The Plan touches on the following Strategic Objectives in the 2024-2028 Strategic Plan:

- Enhance Community Inclusivity
- Support a Thriving Economy

Staff Recommendation:
Staff requests the Town Council review the Assignment and Assumption of Second Amended & Restated Development Agreement for 101 W. Main.

Reviews and Approvals:

- Tom Fisher, Town Manager

Attachments:

- Attachment 1 – Assignment and Assumption of Second Amended & Restated Development Agreement

ASSIGNMENT AND ASSUMPTION OF SECOND AMENDED & RESTATED DEVELOPMENT AGREEMENT

101 W. Main, Frisco, CO

This Assignment and Assumption of Second Amended and Restated Development Agreement ("Assignment"), dated July ___, 2026 ("Effective Date"), is among NHPF WEST MAIN, LLC, a Colorado limited liability company ("Assignor"), WEST MAIN APARTMENTS LLLP, a Colorado limited liability limited partnership ("Assignee"), and the TOWN OF FRISCO, a Colorado home rule municipal corporation ("Town").

Assignor, the Town, the Frisco Community Housing Development Authority, a Colorado public body corporate and politic, and The NHP Foundation, a District of Columbia nonprofit corporation are party to that certain Second Amended and Restated Development Agreement dated June 25, 2024, as amended by that certain First Amendment to Second Amended & Restated Development Agreement dated November 11, 2025 (as amended, the "Development Agreement"), a copy of which is attached here as Exhibit A.

Assignor has agreed to assign to the Assignee all of Assignor's rights, title, and interest in and to the Development Agreement, and the Assignee has agreed to assume all of Assignor's obligations under the Development Agreement.

The parties therefore agree as follows:

1. Assignment and Assumption. Assignor hereby assigns and transfers to the Assignee all of Assignor's rights, title, and interest in the Development Agreement. Assignee hereby assumes and agrees to perform all of Assignor's obligations and liabilities that arise on or after the Effective Date under the Development Agreement.

2. Consent. Pursuant to Section 10 of the Development Agreement, the Town hereby consents and agrees to this Assignment and shall remain subject to its duties and obligations under the Development Agreement.

3. Effect on the Development Agreement.

(a) This Assignment amends the Development Agreement in all respects necessary to conform to this Assignment. If any provisions of the Development Agreement conflict or appear to conflict because of this Assignment, the parties shall reconcile and construe the conflicting provision to give effect to the terms and intent of this Assignment.

(b) Except as amended by this Assignment, the Development Agreement continues unmodified and remains in full force and effect.

(C) The parties hereto consent to the use of electronic signatures.

(*signature page follows*)

The parties are signing this Assignment on the Effective Date.

ASSIGNOR:

NHPF WEST MAIN, LLC,
a Colorado limited liability company

By: The NHP Foundation, a District of Columbia nonprofit corporation, its Sole Member and Manager

By: ______________________________
Name: John M. Welsh
Its: Senior Vice President

ASSIGNEE:

WEST MAIN APARTMENTS LLLP,
a Colorado limited liability limited partnership

By: NHPF West Main GP, LLC, a Colorado limited liability company, its General Partner

By: The NHP Foundation, a District of Columbia nonprofit corporation, its Manager

By: ______________________________
Name: John M. Welsh
Its: Senior Vice President

TOWN:

TOWN OF FRISCO, a Colorado home rule municipal corporation

By: ______________________________
Name: Frederick J. Ihnken
Its: Mayor

EXHIBIT A

Contract

(*attached*)