

## **AMENDED AND RESTATED LOAN AGREEMENT**

**THIS AMENDED AND RESTATED LOAN AGREEMENT** (“Loan Agreement”), is made and entered into as of \_\_\_\_\_, 2025 (“Effective Date”), by and between the **TOWN OF FRISCO**, a Colorado home rule municipal corporation (the “Lender”) and **NHPF GALENA, LLC**, a Colorado limited liability company (the “Borrower”).

### **RECITALS**

A. The Borrower and Lender entered into that Loan Agreement dated May 7, 2025, and this Agreement is made by Borrower and Lender to restate the original Loan Agreement.

B. The Lender has agreed to make a loan to Borrower, under the terms and conditions stated herein, for the sole purpose of acquiring the leasehold interest in that certain real property pursuant to the Ground Lease between Borrower and Lender dated of May 7, 2025 (the “Ground Lease”), legally described on the attached Exhibit A (the “Property”), which the Borrower shall develop and operate as multifamily housing (the improvements with the leasehold interest in the Property, the “Development”).

C. The Borrower anticipates it will obtain an additional construction and permanent loan for the construction and operation of the Development (the “Senior Loan”) pursuant to an issuance of Section 501(c)(3) bonds which will be privately or publicly placed with an institutional underwriter or financial institution (the “Senior Lender”) to provide funding for the Senior Loan.

D. That certain Development Agreement dated as of May 23, 2023, as amended and restated by that Second Amended and Restated Development Agreement dated April 8, 2025 (the “Development Agreement”), by and among Lender, the Frisco Community Housing Development Authority, The NHP Foundation, a District of Columbia nonprofit corporation, and Borrower (collectively, with the NHP Foundation, the “Developer”), sets forth certain terms and conditions regarding the design and construction of the Property.

E. Pursuant to the Development Agreement, an affordability covenant in the form attached as Exhibit B will be recorded in the real property records of Summit County, encumbering the Property and imposing certain restrictions on the use of the Property (the “Affordability Covenant”).

F. 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. **The Loan.** The Lender hereby agrees to lend such funds to the Borrower (the "Loan") under the terms and conditions of this Loan Agreement. The Borrower agrees to borrow from the Lender the total sum of Eight Million One Hundred Thousand and no/100 Dollars (\$8,100,000.00) for the purpose of acquisition and development of the Property under the terms and conditions of this Loan Agreement. The Loan shall be subject to repayment as provided in the Note.

On May 7, 2025, the Borrower executed and delivered the original Loan Agreement to the Lender, a Promissory Note in the original principal amount of \$8,100,000.00 (the "Note"), a Leasehold Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Leases securing the Note against the Property (the "Deed of Trust"), an Unconditional Guaranty by Developer for the benefit of Lender (the "Guaranty"), a Collateral Assignment of Membership Interest and Security Agreement by Developer, Borrower and Lender (the "Collateral Assignment"), a Collateral Assignment of Contract Rights by Developer to and for the benefit of Lender (the "Contract Rights Assignment"), an Assignment and Subordination of Construction Contract by Borrower in favor of Lender, consented to by the general contractor for the development (the "Construction Assignment") and an Assignment and Subordination of Architect's Contract by Borrower in favor of Lender, consented to by the architect to the Development (the "Architect Assignment" together with the Collateral Assignment, the Contract Rights Assignment, and the Construction Assignment the "Assignments," the Assignments together with this Loan Agreement, the Note, the Deed of Trust and the Guaranty, the "Loan Documents").

As of the date of this Agreement, Borrower and Lender agree that the original Loan Agreement shall be amended and restated by this Agreement, and that Borrower shall provide an Amended and Restated Unconditional Guaranty. In addition, prior to consummation of Borrower's first mortgage bond financing it shall enter into an Amended and Restated Construction Assignment and an Amended and Restated Architect Assignment acceptable to Lender. At or prior to completion of construction, Borrower also agrees to Assignment of Property Management Agreement acceptable to Lender. To the extent that Borrower does not comply with the provisions of the foregoing provisions of this Section 1, Lender shall not be entitled to make any further disbursements under the Loan.

2. **Loan Terms / Disbursement.** Lender shall disburse funds to Borrower as follows:

(a) Lender shall not be required to advance more than the following amounts in each of the following years:

- i. In calendar year 2025, Lender shall not be required to advance more than \$3,100,000.

- ii. In calendar year 2026, Lender shall not be required to advance more than \$4,000,000.
- iii. In calendar year 2027, Lender shall not be required to advance more than \$1,000,000.

Notwithstanding the foregoing, all amounts subject to advance under this loan are subject to annual appropriation by the Town Council of Lender in the Town Council's sole and absolute discretion. Nothing herein is intended to constitute a multiple fiscal year financial obligation of the Lender and in no event shall Lender be obligated to advance any amounts that would be in violation of the Colorado Constitution or otherwise by law. Lender agrees that it shall cause its Town Manager to annually propose to the Town Council for adoption as part of the Town's annual budget, and for appropriation thereafter pursuant to the budget, an amount sufficient to meet the Lender's obligations hereunder for fiscal years after the fiscal year of the Effective Date hereof; provided, however, that any failure on the part of the Town Manager to do so shall not constitute a violation of the terms of this Loan Agreement and shall have no impact on the right of the Lender to determine whether to appropriate funds sufficient to meet Lender's obligations hereunder in future fiscal years.

(b) Borrower shall present to Lender each Application for Payment prepared on forms AIA G702 and AIA G703, including all supporting documentation for all amounts requested along with certificates for payment issued by the architect, and a representation by Borrower as to the accuracy of the foregoing and compliance of such application for payment with the terms of the construction contract, as applicable. Borrower may make an initial Application for Payment upon execution of this Agreement in the amount not to exceed \$1,900,000, to reimburse it for predevelopment costs, subject to substantiation by third party invoices and a review and approval of the Town. Except as aforesaid, until a permit for the Development has been issued and the bond financing for the Development has closed, Developer may submit and the Town is obligated to approve draw requests to pay for demolition costs only. "Demolition costs" means the hard and soft costs of demolition and related costs including permits, fees, and stormwater management on the Development site. Thereafter, Lender shall make progress payments to Borrower on account of the amount set forth such application for payment not later than the 30<sup>th</sup> day of the following month. Borrower shall provide to Lender any and all invoices, related to costs and expenses of the Development and any other evidence reasonably required by the Lender or the architect to demonstrate that payments already made by Borrower or any other party on account of the cost of the work equal or exceed progress payments already received by Borrower.

(c) The "Application for Payment" (AIA Document G702 and G703) shall serve as the job cost breakdown and shall be documents from which Loan funds will be advanced. The documentation submitted with each monthly Application for Payment by will be limited to the following: a) AIA G702 and AIA G703, b) Unconditional

Conditional Lien Waiver from the applicable service provider for previous month's payment (on a form complying with state law), waiving all liens and all claims for payment for the work, materials and supplies covered by all previously-paid Applications for Payment, c) Conditional Lien Waiver from the applicable service provider for current month's payment (on a form complying with state law), waiving all liens and all claims for payment for the work, materials and supplies covered by the Application for Payment being submitted, d) if applicable, an updated construction schedule and narrative with photos including depiction of the status of construction, and e) such other information, documentation, and materials as Lender may reasonably require to evidence compliance with and fulfillment of the requirements of the applicable service provider contract.

(d) Each Application for Payment shall be based on the most recent schedule of values submitted by the Borrower. The schedule of values shall allocate the entire development cost among: (1) the various portions of the work; (2) any contingency for costs that are included in the development cost but not otherwise allocated to another line item or included in an approved change order; and (3) the service provider's fees. Material deposits shall be included in the Application for Payment for the month when they are made (as if material stored on site) and paid by Lender with its payment. Applications for Payment shall show the percentage of completion of each portion of the work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage obtained by dividing (i) the expense that has actually been incurred by the Borrower on account of that portion of the work and for which the Borrower has made payment or intends to make payment prior to the next Application for Payment, by (ii) the share of the development cost allocated to that portion of the work in the schedule of values.

(e) In the event that Borrower has not closed on its bond financing with the Senior Lender by December 31, 2025, upon written request of Lender, Borrower shall transfer and assign to Lender all plans and specifications, rights to and copies of any engineering reports, market studies, environmental reports, traffic studies and all other third party reports, financing commitments, and any other work product related to the Improvements ("Work Product"). Upon receipt and approval by Lender of such Work Product, Lender shall terminate the Ground Lease and release Borrower from any further obligations under the Loan.

**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 is a limited liability company, 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;

(b) The Loan Documents, as executed and delivered to Lender by Borrower and Developer, are valid and binding obligations of Borrower and Developer, enforceable in accordance with their terms;

(c) Borrower has full power and authority to execute, deliver, and perform this Agreement and any other applicable Loan Document to which Borrower is a party, and the execution, delivery and performance of the Loan Documents do not require the consent of any person not heretofore obtained;

(d) The execution, delivery, and performance of this Agreement and the other 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;

(e) The execution, delivery, and performance of the Unconditional Guaranty, will not, (i) constitute a breach or default under any other agreement to which the Developer is a party or may be bound or affected, or (ii) violate any law or court order that may affect the Developer;

(f) 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;

(g) 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 Deed of Trust, (ii) have a material adverse effect on Borrower's or Developer's ability to perform its obligations under any of the Loan Documents;

(h) All financial statements and other information previously furnished to Lender by Borrower, Developer, and any entity having an ownership interest in Borrower and/or Developer 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;

(i) Borrower shall construct improvements on the Property consisting solely of affordable housing (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;

(j) 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;

(k) The Property fronts on a publicly maintained road or street and the Property has both legal and practical access to the same;

(l) 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; and

(m) 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.

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.

(n) 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;

(o) Borrower does not maintain a plan under the Employee Retirement Income Security Act of 1974; and

(p) Borrower agrees to comply with all existing encumbrances applicable to the Property, including, without limitation, the Ground Lease, State Intergovernmental Grant Agreement for Downtown Workforce Housing Infrastructure under the More Housing Now (MHN) Program, State Intergovernmental Grant Agreement between Summit County and Lender, and that certain State Intergovernmental Grant Agreement for the Strong Communities and Infrastructure Program. Borrower acknowledges receipt of each of the foregoing grant agreements.

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, as defined in the Deed of Trust (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 that Borrower shall have the right to contest in good faith and with reasonable diligence the validity of 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 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 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 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 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 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 Developer 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 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 and the Senior Loan, 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 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 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 operating agreement of Borrower (as approved by Lender) (the "Operating Agreement") or any purchase option or right of first refusal to the benefit of the affiliates of Borrower; and
- vii. Change any managing member of Borrower or any authorized signatory of Borrower, except in accordance with the Operating Agreement and then only if prior to such transfers or change (whether through removal, replacement or otherwise) the transferee executes an assignment of managing member'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 managing member.

(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 company membership 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, which includes the Senior Loan, 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 company formalities independent of any other entity, (g) shall not change its Operating Agreement, unless otherwise consented to by Lender, 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 Loan Documents.

(j) No Additional Indebtedness/Contingent Obligations. Borrower shall not create, incur, assume or suffer to exist any indebtedness, except for the Loan and the Senior 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. **Events of Default.** The following shall constitute an Event of Default under the terms of this Loan 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 Loan Agreement, or it violates the covenants contained in any of the Loan Documents, the Development Agreement, or the Affordability Covenant in any material respect, and such failure remains uncured after sixty (60) days of Borrower's receipt of written notice of such failure from Lender, and, provided that Borrower shall have instituted reasonable efforts to cure within such sixty (60) days, if such default cannot reasonably be cured within such sixty (60) days, Borrower shall have an additional thirty (30) days to cure.

(b) If Borrower fails to pay any installment of principal or interest on the Note when due, and such failure is not cured within thirty (30) 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 5, 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 5, 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 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.

## **6. 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 Loan Documents shall not be deemed to be a waiver of any subsequent breach of the Loan Documents, or any other obligation, agreement or covenant. Lender's forbearance in pursuing or enforcing a remedy for Borrower's breach of any of the obligations set forth in the 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  
1919 14<sup>th</sup> Street  
Suite 700  
Boulder, CO 80302

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  
Murray Dahl Berry & 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 Loan Agreement, the Note and any other 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 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.

[SIGNATURE PAGES FOLLOW]

IN TESTIMONY WHEREOF, the Borrower has hereunto set its hand the day and year first above written.

**NHPF GALENA, LLC,**  
a Colorado limited liability company

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

By: \_\_\_\_\_  
Name: Scott L. Barkan  
Its: Senior Vice President



IN TESTIMONY WHEREOF, the Lender has hereunto set its hand the day and year first above written.

**TOWN OF FRISCO,**  
a Colorado home rule municipal corporation

( S E A L )

Attest:

\_\_\_\_\_  
Stacey Nell, Town Clerk

By: \_\_\_\_\_  
Frederick J. Ihnken, Mayor

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

The leasehold interest pursuant to the Ground Lease in that certain property described as follows:

Lots 13,14,15,16,17,18,19,20 and 21, Block 3, Frisco Town Subdivision, County of Summit, State of Colorado.

Addressed as 602 Galena Street, Frisco, CO, 80443

**EXHIBIT B**  
**AFFORDABILITY COVENANT**

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