

**SECOND AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT  
(602 GALENA STREET)**

Dated as of March \_\_\_, 2025

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This Second Amended and Restated Development Agreement (602 Galena Street) (this “**Agreement**”), dated as of March \_\_, 2025 (the “**Effective Date**”), is made by and between the Town of Frisco, a Colorado home rule municipal corporation (the “**Town**”), The NHP Foundation, a District of Columbia nonprofit corporation (“**NHPF**”), NHPF Galena, LLC, a Colorado limited liability company and wholly owned subsidiary of NHPF (“**NHPF Galena**,” together with NHPF and any permitted successors and/or assigns, “**Developer**”), and Frisco Community Housing Development Authority, a Colorado body corporate and politic (“**FCHDA**”).

## **RECITALS**

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 Town has identified a shortage of affordable housing for low-income and middle-income residents within its limits and has determined that it is necessary for the Town to take steps to address the shortage.

C. The Town owns certain real property that is commonly known as 602 Galena Street, Frisco, Colorado, and that is legally described in Exhibit A hereto (the “**Town Property**”).

D. The Town has determined that the development of the Town Property into affordable housing will lessen the burdens of the Town to provide affordable housing for low-income and middle-income residents.

E. The Town intends that the Town Property be used to develop affordable housing and for other incidental purposes in compliance with the intergovernmental agreement between the Town and Summit County (the “**County IGA**”), attached as Exhibit B hereto. The aforementioned Exhibits are incorporated herein by reference.

F. In connection with redevelopment of the Town Property as well as redevelopment of a separate parcel in the Town addressed as 101 West Main Street (the “**Developer Property**”), the Town and NHPF entered into that certain Development Agreement dated May 23, 2023 (as amended by that certain First Amendment to Development Agreement dated the same date, the “**Original Development Agreement**”).

G. NHPF West Main, LLC, a subsidiary of NHPF, purchased the Developer Property on June 14, 2023. NHPF West Main, LLC assumed NHPF’s obligations under the Original Development Agreement with respect to the Developer Property, as memorialized in that certain Partial Assignment and Assumption of Development Agreement dated June 16, 2023. As of the date of this Agreement, redevelopment of the Developer Property is governed by that certain Second Amended and Restated Development Agreement between the Town and NHPF West Main, LLC dated as of June 25, 2024 (the “**Restated Developer Property Agreement**”).

H. As contemplated by the Original Development Agreement, NHPF and the Town entered into that certain Ground Lease Option Agreement dated May 23, 2023 with respect to the Town Property (the “**Original Lease Option**”). The Town and NHPF now desire to terminate that Original Lease Option and replace it with the Ground Lease Agreement in the form attached hereto as Exhibit C.

I. NHPF and the Town desire to restate the Original Development Agreement in its entirety with respect to redevelopment of the Town Property. The effect of this Agreement and the Restated Developer Property Agreement is a bifurcation of the Original Development Agreement into two agreements: This Agreement governs redevelopment of the Town Property and the Restated Developer Property Agreement governs redevelopment of the Developer Property.

J. NHPF Galena desires to plan, entitle, finance, construct improvements on and enter into a ground lease with the Town on the Town Property, and will obligate itself to do so.

K. The Town has established FCHDA to assist in meeting the critical needs of development of affordable housing in the Town. If the bonds to finance construction of the Residential Project are issued by the Public Finance Authority, a joint powers commission duly organized and validly existing under the laws of the State of Wisconsin, the parties anticipate that an affiliate of FCHDA may serve as a special limited partner or a special member of the NHPF Galena to facilitate a property tax and sales and use tax exemption under C.R.S. Section 29-4-227(1)(b) in proportion to the percentage of affordable units developed on such property and an exemption under C.R.S. Section 29-4-227(2) for sales and use tax during construction.

L. Developer has agreed to redevelop the Town Property in accordance with this Agreement and with all applicable local, state and federal laws.

## **AGREEMENT**

NOW, THEREFORE, the parties agree as follows:

### **SECTION 1 DEFINITIONS.**

“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.

“CHFA” means the Colorado Housing and Finance Authority.

“Closing” means the events described in Section 3.05.

“County IGA” is that agreement attached as Exhibit B.

“Developer” has the meaning set forth in the first paragraph of this Agreement.

“Developer Property” has the meaning set forth in Recital “F” above.

“Due Diligence Period” has the meaning set forth in Section 3.01.

“Dwelling Unit” means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Effective Date” has the meaning set forth in the first paragraph of this Agreement.

“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. § 9601(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.

“Ground Lease” means the form of agreement attached hereto as Exhibit C.

“Indemnified Parties” has the meaning set forth in Section 10.01.

“Infrastructure Project” has the meaning set forth in Section 2.03.

“Residential Project” has the meaning set forth in Section 2.01.

“Title Commitment” has the meaning set forth in Section 3.03.

“Title Company” has the meaning set forth in Section 3.04(a).

“Town” has the meaning set forth in the first paragraph of this Agreement.

“Town Property” is that property described in Exhibit A.

“Town Code” means the Code of Ordinances of the Town of Frisco.

“FCHDA” has the meaning set forth in the preamble above.

“Unavoidable Delays” means delays, outside the control of the party claiming their occurrence, which are the direct result of strikes, lockouts, other labor troubles, unusually severe or prolonged bad weather, acts of God, acts of war or terrorism, pandemic and related acts of any federal, state or local government (other than the Town) including, but not limited to, responsive legislation, states of emergency and executive orders, fire or other casualty to the applicable property, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the Town) which directly result in delays, acts of the public enemy or acts of terrorism and discovery of unknown hazardous materials or other concealed site conditions or delays of contractors due to such discovery. In the event of an Unavoidable Delay, the applicable dates or deadlines that are subject to Unavoidable Delays as provided herein shall be extended by one (1) calendar day for each corresponding calendar day the applicable Unavoidable Delay is in effect.

## SECTION 2 DESCRIPTION OF THE DEVELOPMENT.

### Section 2.01 Development of Town Property.

(a) Developer shall develop the Town Property into not less than 54 Dwelling Units of affordable housing (the “**Residential Project**”).

(b) Developer agrees to the following unit mix of the affordable housing:

Unit Type	Total Units	AMI Limit
Studio or Small 1 Bedroom	22	120%
1 Bedroom	20	120%
2 Bedroom	12	120%
<b>Total</b>	<b>54 units</b>	

(c) Subject to Unavoidable Delays, the construction of the Residential Project will commence not later than the date in 5.03(a) and completion of construction shall occur not more than eighteen (18) months later.

(d) The Town or its affiliate shall have the following rights with respect to the Town Property (as further set forth in the Right of First Offer and Refusal Agreement attached as an exhibit to the Ground Lease (to the extent of any conflicts with the description below and the Right of First Offer and Refusal Agreement, the Right of First Offer and Refusal Agreement shall control));

(i) If Developer, through NHPF Galena, receives a bona fide, third party offer, which Developer intends to accept, to directly or indirectly acquire NHPF Galena’s leasehold interest in the Town Property or its interests in NHPF Galena (or any upper tier entity involving a change in control of NHPF Galena) (the “**Offer**”), the Town or its affiliate shall have a first right of first refusal (the “**ROFR**”) to acquire such interests at the price (the “**Offer Price**”) and in accordance with the terms of such third party offer; provided that the purchase price by the Town under the ROFR (the “**ROFR Price**”) shall be reduced by fifty percent (50%) of the amount by which the Offer Price exceeds the amount of outstanding debt secured by the Town Property and owed by NHPF Galena, with such reduction in ROFR Price in no event to exceed the outstanding and unforgiven amount of the Town Loan.

(ii) Within five (5) days of the date that Developer receives the Offer, Developer shall send a copy of such Offer to the Town with a notice stating that Developer intends to accept such Offer and that the Offer shall trigger the Town’s right to exercise the ROFR (the “**ROFR Notice**”). Upon the Town’s receipt of the ROFR Notice, the Town shall have sixty (60) days to deliver to Developer a written notice of its intent to exercise the ROFR (the “**First Acceptance Notice**”). If the Town delivers the First Acceptance Notice in accordance with the provisions of this Section 2(d)(ii), then Developer and the

Town shall, within thirty (30) days (the “**First Negotiating Period**”) in good faith attempt to agree on a definitive purchase and sale agreement based on the price and other terms contained in the third party offer. If the Town does not deliver its First Acceptance Notice in accordance with the provisions of this Section 2(d)(ii), or if Developer and the Town fail to reach agreement on a definitive purchase and sale agreement during the First Negotiating Period, with each party negotiating in good faith, and either Developer or the Town terminate further negotiations by notice to the other, or if in any event the Town has not consummated its purchase prior to ninety (90) days after receipt of the ROFR Notice, then Developer shall be permitted to sell its leasehold interest in the Town Property or its interests in NHPF Galena (as applicable, pursuant to the third party offer described in the ROFR notice) and the Town’s ROFR shall terminate and be of no further force or effect. However, in the event Developer has not entered into a third-party purchase and sale contract within 365 days, then the Town’s ROFR shall be reinstituted.

(iii) If Developer shall desire to directly or indirectly convey its leasehold interest in the Town Property or its interests in NHPF Galena (or any upper tier entity involving a change in control of NHPF Galena) (the “**Interests**”) to a party other than NHPF or its affiliate, then prior to any marketing of the Town Property or the interests in NHPF Galena for sale, Developer shall make a written offer to the Town (the “**ROFO Notice**”) specifying the proposed purchase price and other terms of the sale which Developer shall certify is its best estimate of the fair market value of the Town Property (the “**FMV**”). The price payable by the Town or the Interests, as applicable (the “**ROFO Price**”) shall be the greater of (a) the FMV of the Town Property or the Interests, as applicable, or (b) the outstanding indebtedness secured by the Town Property, provided that the ROFO Price otherwise determinable under (a) or (b) shall be reduced by fifty percent (50%) of the amount by which the Town Property FMV exceeds the amount of outstanding debt secured by the Town Property and owed by NHPF Galena, with such reduction in ROFR Price in no event to exceed the outstanding and unforgiven amount of the Town Loan. If the Town elects to enter into negotiations for the purchase of the Town Property followings its receipt of a ROFO Notice, the Parties shall then enter into good faith negotiations for the purchase and sale of the Town Property for a purchase price not less than the ROFO Price and shall have a period not to exceed 30 days (the “**Negotiation Period**”) to execute a mutually acceptable purchase and sale agreement for the same (the “**Purchase Agreement**”) with the purchase price determined as set forth above. The Town shall have a period of ninety (90) days from the date of receiving the ROFO Notice to purchase the Town Property or Town Property Ownership Interests, as applicable, on the specified terms. If the Town does not give notice electing to exercise its ROFO Notice within such ninety (90) day period, Developer shall have the right, for one year thereafter, to sell the Town Property or Town Property Ownership Interests for sale, as applicable, to a third party at a price no less than the price specified in the offer pursuant to the ROFO Notice. If the Developer fails to comply with the provisions of this Section 2(d)(iii), the Town shall continue to have the right of first refusal on the purchase described in Section 2(d)(ii) at a price that is ten percent (10%) less than the price set forth in Section 2(d)(ii).

(iv) A memorandum shall be recorded in the Summit County real property records addressing the provisions of this Section 2.01(d) in favor of the Town at the time of the closing of the initial construction financing.

## Section 2.02 Developer Obligations.

(a) Any change in the number of units or affordability requirements in the Dwelling Units on the Town Property from the descriptions set forth in this Section 2 shall require the prior written consent of the Town, in its reasonable discretion. The Town Manager may approve in writing an increase or decrease of up to 10% of the number of units, average unit size, or the average affordability requirements. An increase or decrease of more than 10% of the number of units, average unit size, or the average affordability requirements will be subject to the approval of the Town Council.

(b) Developer will, at its sole cost and expense, make all development applications, and take all actions that are legally necessary or desirable to Developer to develop the Town Property in accordance with the parameters defined within this Agreement. Developer will be solely responsible for the development costs and costs of construction of the Town Property. Developer shall be solely responsible for all guarantees related to the approved projects.

(c) As a part of the consideration to the Town for this Agreement, and as required by the Town Code of Ordinances and the Town's development plan approval for the Residential Project's density bonus, the form of affordability covenant attached hereto as Exhibit D will be executed by the Town and recorded in the real property records of Summit County, encumbering the Town Property ("**Affordability Covenant**"). The Affordability Covenant will not be subordinated to any financing for the Residential Project.

(d) Developer recognizes that current Town of Frisco Building Codes require residential development to be designed to meet Zero Energy Ready Homes (ZERH) requirements, and that commercial developments are required to be 10% more energy efficient than the 2018 IECC. Developer shall pursue designing and constructing the projects on the Town Property to be Net-Zero Energy projects and / or maximizing sustainability features, and any failure of the Town Property to comply with the Net-Zero Energy requirements shall require the prior written consent of the Town, which shall not be unreasonably withheld.

(e) The Town shall have a right to examine all books and financial records of Developer that may relate to the Town Property from time to time, and to cause an audit of the same at the Town's expense, to ensure compliance with the terms and conditions of this Agreement.

(f) Town and Developer acknowledge that Developer intends to charge NHPF Galena a developer fee (the "Developer Fee") for the Residential Project in the amount of twelve percent (12%) of total development costs ("**TDC**"). "TDC" means the total cost of carrying out the development of the Project, including all costs necessary for administration, planning, site acquisition, financing, on-site demolition, construction, site-based utility costs, equipment, etc., and excluding project reserves and construction loan interest. The parties acknowledge that the Town has not committed any funds to pay any portion of the Developer Fee and is under no obligation to contribute any funds to payment of the Developer Fee.

(g) Developer understands that the Town may subsidize or encourage the development of other developments in the Town, including properties that compete with the Town Property,



and that such subsidies may be more favorable than the terms of this Agreement, and that the Town has not represented that development of the Town Property will be favored over the development of other properties.

(h) Developer agrees to develop the Town Property with reasonable care and diligence in accordance with this Agreement. The Town acknowledges that Developer is not a licensed architect, engineer, or contractor, and nothing in this Agreement shall be deemed to require Developer to perform any act which would constitute the practice of architecture, engineering, or construction.

Section 2.03 Infrastructure Improvements. The Town has been awarded Strong Communities grant funds by the State of Colorado for construction of public infrastructure to support the Residential Project (the “**Infrastructure Project**”), as further detailed in that certain State of Colorado Intergovernmental Grant Agreement for SLFRF dated September 26, 2024, SCIG-IN-109 Frisco – Downtown Workforce Housing (the “**SLFRF Agreement**”). The Town has also been awarded More Housing Now grant funds by the State of Colorado for the Infrastructure Project, as further detailed in that certain State of Colorado Intergovernmental Grant Agreement dated October 3, 2024 for Project Number EIAF 9929 – MHN Frisco Downtown Workforce Housing Infrastructure (the “**MHN Agreement**” and, together with the SLFRF Agreement and any other grant agreements related to the Infrastructure Project, the “**Grant Agreements**”). The Town will administer the Infrastructure Project. NHPF agrees to take all reasonable steps to cooperate with the Town on the Infrastructure Project to facilitate the Town’s compliance with the Grant Agreements, including coordination of the Infrastructure Project with the Residential Project.

### **SECTION 3 LEASEHOLD ESTATE OVER THE TOWN’S PROPERTY.**

Section 3.01 Property Inspection. As of May 23, 2023, the Town has provided and will continue to provide Developer, its employees and agents, with ongoing access to the Town Property to, at Developer’s sole cost and expense, inspect it, conduct any due diligence, tests, surveys, or other studies or analysis, or to collect any data, samples, specimens or information as Developer deems necessary, in its sole discretion; provided that, except as set forth below, Developer shall have no right to obtain an environmental assessment of the Property without the prior written consent of the Town, which shall not be unreasonably withheld, and shall repair any damage resulting from any such activities and shall return the Town Property substantially to its condition prior to such damage. Developer shall not permit claims or liens of any kind against the Town Property for work performed on the Town Property at Developer’s request. Developer agrees to indemnify, protect, and hold Town harmless from and against any liability, damage, cost or expense incurred by Town and caused by any such work, claim or lien. This indemnity includes the Town’s right to recover all costs and expenses incurred by the Town to defend against any such liability, damage, cost, or expense, or to enforce this section, including the Town’s reasonable attorney fees, and other legal fees and expenses. The provisions of this paragraph shall survive the termination of this Agreement.

Section 3.02 Materials to be Delivered. The Town has provided to Developer and shall continue to make available to Developer for its review and copying the following materials concerning the Town’s Property:

(a) Any, and all, written information in the possession of the Town concerning the Town Property, including but not limited to, public works, planning and building department files;

(b) Any, and all, vendor, contractor, lease or other agreements between the Town and any third party relating to the Town's Property; and

(c) The most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by the Town to the Town's actual knowledge, current as of the date of this Agreement.

Section 3.03 Closing. Closing of the acquisition by Developer from the Town of the leasehold interest in the Town Property pursuant to the Ground Lease must occur no later than May 1, 2025 and, in any case, prior to Developer's demolition of the improvements currently located on the Town Property pursuant to any required demolition permit(s). At Closing, the following will occur, each being a condition precedent to the others, and all being considered as occurring simultaneously:

(a) The Town shall execute, have acknowledged and deliver to Developer: (i) the Ground Lease conveying a leasehold interest Town's Property to Developer along with corresponding Memorandum of Ground Lease; (ii) a certification that all representations and warranties made by the Town in this Agreement are true, accurate and complete at the time of the Closing; (iii) an affidavit certifying that the Town 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 Developer a policy of owner's title insurance.

(b) Developer will deliver to the Town the sum of \$1.00 for each year in which the Ground Lease shall be in effect, along with a certification that all representations and warranties made by Developer in this Agreement are true, accurate and complete at the time of the Closing.

(c) Developer will pay the Title Company's closing costs and will execute settlement sheets, closing instructions, and such other agreements and documents (with customary pro-rations in accordance with local practice for commercial property transactions) as may be required to implement and to carry out the intent of this Agreement.

(d) Developer will pay for the costs of any third-party reports and will reimburse the Town for the cost of a phase I environmental assessment of the Town Property, if any, that was obtained by the Town pursuant to this Agreement.

Section 3.04 "As Is" Nature of Transaction. The Town has not made, does not make and specifically negates and disclaims any representations, warranties, covenants or guarantees of any kind, whether express or implied: (a) concerning or with respect to the presence of hazardous substances on the Town Property or compliance of the Town Property with any and all applicable Environmental Laws; and (b) the value, nature, quality or condition of the water, soil and geology of the Town Property. Developer acknowledges and agrees that to the maximum extent permitted by law, the lease of the Town Property, as provided for herein, is made on an "as is," "where is" and "with all faults" condition and basis with respect to the existence of hazardous substances and

the condition of the water, soil, and geology of the Town Property. Developer and anyone claiming by, through or under Developer hereby fully and irrevocably releases the Town and its successors from any and all claims that it may now have or hereafter acquire against the Town, its officials, officers, employees, representatives and agents for any cost, loss, liability, damage, expense, claim, demand, action or cause of action arising from or related to any such defects and conditions, including, without limitation, compliance with Environmental Laws, affecting the Town Property or any portion thereof.

Section 3.05 The Town will receive copies of the standard operating, leasing, financial and other reports, audits, and tax returns, that are provided to the lenders and governmental beneficiaries of affordability covenants on the same frequency as required by such beneficiaries. Failure to provide such reports within the defined timeframe will result in a \$100.00 per day penalty payable by Developer to the Town, beginning on the date that the Town provides written notice of such default.

Section 3.06 Developer will provide a complete set of closing documents to the Town within thirty (30) calendar days after execution of the documents provided the same have been delivered to Developer. Failure to provide such documents within such thirty (30) days, after ten days following written demand therefor, will result in a \$100.00 per day fee payable to the Town until documents are provided. The Town agrees and acknowledges that some documents (e.g. title policy) may not be available on this timeline and, as a result, a final and full closing transcript will not be available.

#### **SECTION 4 TOWN HOUSING AUTHORITY PARTICIPATION.**

This Section 4 applies only if FCHDA is admitted as the special limited partner or special member in NHPF Galena such that the entity receives a property tax and sales and use tax exemption under C.R.S. Section 29-4-227(1)(b) in proportion to the percentage of affordable units developed on the property and an exemption under C.R.S. Section 29-4-227(2) for sales and use tax during construction.

The provisions of this Section 4 assume that FCHDA has established a definition of the phrase “persons of low income” as used in C.R.S. § 29-4-227, with such definition to be used in evaluating the Residential Project for property and sales and use tax exemption under C.R.S. § 29-4-227, substantially consistent with the following: “Persons of low income” shall mean individuals or households in Summit County with incomes at or below one hundred twenty percent (120%) of Area Median Income based on data published by the U.S. Department of Housing and Urban Development (or similar governmental agency, such as CHFA) and updated on an annual basis. If FCHDA has not established such a definition, in its sole and absolute discretion for any or no reason whatsoever, the provisions of this Section 4 do not apply.

FCHDA, either directly or through a wholly owned subsidiary, shall be entitled to become a special limited partner or member of each of NHPF Galena under the terms outlined below:

Section 4.01 FCHDA may acquire a 0.01% non-managing member (non-controlling) interest in NHPF Galena pursuant to an Addendum to be executed at the financing closing of the Town Property.

Section 4.02 Developer agrees to pay all out-of-pocket expenses, including, without limitation, all legal fees, applicable to FCHDA's admission as a special limited partner or member of NHPF Galena.

Section 4.03 At the end of the initial 20 years of operation of the Town Property and every 10 years thereafter, FCHDA will review the economic health of the Town Property and other conditions and determine whether continuing the property tax (and, as applicable, sales and use tax) exemption for the subsequent years is needed for the property to be financially viable based upon recorded affordability restrictions encumbering the property and the then-current financing documents. If FCHDA reasonably concludes that the property tax (and, as applicable, sales and use tax) exemption is not needed for such property to be financially viable, FCHDA may withdraw as a special limited partner or member of NHPF Galena. If FCHDA reasonably determines that the property tax (and, as applicable, sales and use tax) exemption is still necessary for the financial viability of the property, in full or in part, FCHDA will remain as a special limited partner or member of NHPF Galena. For the purposes of this Section, "financial viability" shall mean that the Property would be able to maintain a minimum 1.20 to 1.00 debt service coverage ratio (based upon the required debt service for indebtedness as reasonably approved by FCHDA) after payment in full of applicable property taxes following the termination of the property tax exemption. This Section is not intended to, and shall not be interpreted to, provide any rights to any party other than Developer.

Section 4.04 Upon any material violation by FCHDA of the partnership agreement or operating agreement of NHPF Galena which causes material adverse harm to such entity and is not cured within a reasonable time after written notice from Developer, Developer shall have the option to purchase FCHDA's partnership or membership interest for a price equal to \$100.00.

Section 4.05 The FCHDA shall have the right to withdraw as a partner or member of NHPF Galena upon thirty (30) days written notice to Developer, upon any of the following: (i) a material breach by NHPF or NHPF Galena of any provisions of the this Agreement or the applicable operating agreement or partnership agreement or related agreements of such entity, if such breach is not cured within thirty (30) days following written notice thereof to Developer or if such breach is not able to be cured within thirty (30) days then within sixty (60) days, so long as Developer is diligently pursuing a cure within the first thirty (30) day period; (ii) a failure of NHPF Galena to maintain the Town Property in compliance with applicable laws or otherwise breaches applicable laws, and such failure is not cured within thirty (30) days following written notice thereof by the Town to Developer or, if such breach is not able to be cured within thirty (30) days, then within sixty (60) days, so long as Developer is diligently pursuing a cure within the first thirty (30) day period; (iii) the admission of a new general partner or managing member to NHPF Galena which is unrelated to developer without the consent of FCHDA; (iv) the refinancing of company debt, unless FCHDA has consented to the refinancing, which consent shall not be unreasonably withheld if Developer establishes to the satisfaction of FCHDA that no proceeds of the refinancing shall be used to make any distribution to any partner or member of such entity or repay any loan to a partner or member of such entity (other than repayment of loans made by the general partner, as lender, to NHPF Galena, as borrower, to satisfy construction completion or operating deficit guaranty obligations, which repayments are permitted so long as the Town Property is anticipated to operate at a minimum 1.20 debt service coverage ratio after the closing and funding of such refinancing; (v) a change in Colorado law that no longer permits FCHDA to provide a property

tax or sales and use tax exemption to the project; or (vi) an event of bankruptcy with respect to NHPF Galena.

## **SECTION 5      DEVELOPMENT AND FINANCING APPROVALS.**

### **Section 5.01    Development Approval.**

(a)      Developer shall make all necessary applications required for the construction associated with the Residential Project through the Town as required by the Town's ordinances and regulations.

(b)      The Town acknowledges and agrees that the Town density bonus is applicable to the Residential Project, wherein, pursuant to the Affordability Covenant, 100% of the dwelling units will be affordable rentals to individuals and households earning not more than 120% of Area Median Income.

**Section 5.02    Subsidies.** The Town agrees to provide up to \$8,000,000 in loan funding for the Residential Project (the "**Town Loan**") pursuant to loan documents acceptable in form to the Town. The proceeds of the Town Loan shall be drawable to pay actual Residential Project costs, including for demolition of the improvements currently located on site and the Town and NHPF Galena agree that NHPF Galena may also draw up to \$1,900,000 of the Town Loan to reimburse it for predevelopment costs, subject to substantiation by third party invoices and a review and approval of the Town. The loan will close on the same date as the Closing of the Ground Lease. The loan will be evidenced by a loan agreement; a subordinate promissory note; a subordinate deed of trust, to be granted by NHPF Galena, LLC, encumbering its leasehold estate; an assignment of membership interests in NHPF Galena, LLC, assignment of construction contract, collateral assignment of construction rights, and assignment of property management agreement, all of which assignments shall be subordinate to any assignment granted to the bond loan lender; and a construction guaranty by NHPF; with all such Town Loan documents to be substantially in the form attached hereto as Exhibit E (collectively, the "**Town Loan Documents**"). The Town Loan will mature on the date that is 180 days after the date that the bonds mature or 30 years after the Town Loan Documents are executed, whichever is later. No payments shall be owed until maturity unless NHPF Galena sells or refinances the Residential Project (other than to NHPF or its affiliate) or breaches the Affordability Covenant and, after notice from the Town, fails to timely cure such breach. For every year that NHPF Galena complies with the terms of the Ground Lease, this Agreement and the Affordability Covenant (including timely cure of any breach), the Town will forgive a pro rata portion of the Town Loan as set forth in the Town Loan Documents. The Town Council authorizes and directs the Town Manager to enter into any separate funding or other agreements with NHPF Galena as may be necessary to carry out the intent of this Section within 60 days of the Effective Date or as soon thereafter as reasonably practicable. Such agreement(s) will provide for a commercially reasonable construction loan draw process, through which NHPF Galena will submit monthly draw requests to the Town during demolition of the existing improvements and construction of the Residential Project, with supporting documentation for the costs incurred and conditional lien waivers. Except as noted above, until a permit for the Residential Project has been issued and the bond financing for the Residential Project 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.

#### Section 5.03 Time Periods for Required Actions.

(a) On or before July 1, 2025, Developer shall demolish the existing structure and commence construction of the Residential Project thereon. If Developer shall fail to demolish the existing structure and commence construction on the Town Property on or before July 1, 2025, Developer shall pay to the Town the sum of \$1,500,000.00 that will be owed by the Town to Summit County pursuant to the County IGA because of said failure. On or before July 1, 2027, Developer shall cause residential occupancy of the project on the Town Property. If Developer shall fail to cause residential occupancy of the project on the Town Property on or before July 1, 2027, Developer shall pay to the Town the sum of \$1,500,000.00 that will be owed by the Town to Summit County pursuant to the County IGA because of said failure, provided that Developer shall not be obligated to pay the \$1,500,000 to the Town described in this sentence until Developer has closed on construction financing sufficient to construct the Residential Project and in no event shall Developer be obligated to pay the \$1,500,000 described in this sentence if it fails to close on construction financing to construct the Residential Project. Without limitation of the foregoing requirements, on or before September 30, 2025, Developer shall have made application to the Town, including the payment of building permit fees therefor, for a building permit authorizing the construction of a substantial portion of the improvements to be constructed on the Town Property pursuant to the approved development plan for the Town Property. If Developer fails to make such application within said period, Developer shall be in default of this Agreement and the Town may exercise remedies under Section 8.02. Developer shall have no liability to the Town under this section to the extent that failure to satisfy the deadlines stated above is due to the Town’s failure to timely execute the Ground Lease, the Town Loan Documents, or the demolition permit. The provisions of this Section 5.03 shall survive any termination of this Agreement.

(b) Notwithstanding the foregoing, if Developer proposes in writing to the Town reasonable extensions to the deadlines in this Section for good cause shown and detailed in that writing, at least ninety (90) days prior to the first deadline stated above, the Town will consider a request that Summit County approve such extensions by approving an amendment to the County IGA. Developer acknowledges that the Town cannot guarantee approval of proposed changes by Summit County, and further agrees that such approval will be in the sole and absolute discretion of Summit County. The Town will meet its obligation under this Section by sending a written request to Summit County that includes the writing from Developer that details the good cause for the requested extension. If Summit County fails to approve such amendment and extension within ninety (90) days after the Town’s written request, then the deadline shall not be extended.

Section 5.04 Development Approvals Generally. The Town agrees reasonably to cooperate with Developer with respect to complete and Town Code-compliant application(s) for any permits or approvals required or permitted by the laws of the Town, and any permits or approvals required from any other governmental agency, for purposes of developing the Town Property on a timeline compliant with the deadlines included in this Agreement; provided, however, that all applications for such permits and approvals are in compliance with this Agreement and applicable ordinances and/or regulations, and all application shall be subject to the standard approval processes for such applications normally undertaken by the Town. Nothing

contained in this Agreement shall be construed to obligate the Town to issue any permit or approval necessary or desirable in connection with the development of the Town Property, and the Town may issue any such permit or approval in its sole discretion, with or without conditions, and in accordance with applicable laws of the Town and state. Developer understands and agrees that the Town's consideration and decision with respect to any application Developer may file to obtain approval of the development of the Town Property will be a quasi-judicial decision, which decisions are often to be made only after public hearing. Accordingly, in the event that the Town Property has not received full development approval consistent with this Agreement as it relates to the development plan (whether due to political opposition, initiative, referendum, litigation, the Town's lack of support or any other cause) after three (3) good faith efforts to obtain such approval, then Developer shall have the right to terminate this Agreement by written notice to the Town and the Town and Developer shall proceed in accordance with the provisions of Section 6 below.

Section 5.05 Financing Approvals. If any other project funder requires the Town to consent to Developer's application for project financing for the Town Property, the Town will not unreasonably withhold, condition, or delay such consent. The Town Manager is authorized to execute such consent on behalf of the Town so long as such application is consistent with the requirements of this Agreement, and creates or exacerbates no legal risk or financial burden to the Town.

## **SECTION 6 CERTAIN TERMINATIONS.**

This Section 6 shall apply only to those circumstances where a given paragraph of this Agreement provides a right to terminate this Agreement and further provides that, in the event of such termination, "...the Town and Developer shall proceed in accordance with the provisions of Section 6 below." In such circumstances, this Agreement and the Ground Lease shall terminate; if a memorandum of Ground Lease has been recorded, the parties will execute and record a release; and neither the Town nor Developer shall have any further obligation to the other party whatsoever and neither party shall have any claim for damages against the other based upon such termination.

## **SECTION 7 REPRESENTATIONS, WARRANTIES AND COVENANTS.**

### **Section 7.01 Representations, Warranties and Covenants by Developer.**

Each Developer represents, warrants, and covenants, throughout the term of this Agreement, that:

(a) Each has complete and sole authority to execute and deliver this Agreement to the Town or, in the event that this Agreement is properly assigned to a corporate entity, that such entity is duly organized and validly existing under the laws of the laws of the state of its formation (District of Columbia with respect to NHPF or the State of Colorado with respect to NHPF Galena), that it is not in violation of any provisions of its governing documents or the laws of its state of formation, that it has the power and legal right to enter into this Agreement and 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 conflict with or contravene any law, order, rule or regulation applicable to Developer, violate any provisions of the governing documents of Developer, or constitute a default or result in the breach

of any term or provision of any contract or agreement to which Developer is a party or by which either is bound.

(c) Developer will redevelop and maintain the Town Property in accordance with all federal, state, and local laws, and will comply with all requirements of the Ground Lease, Affordability Covenant, County IGA and the Grant Agreements as each pertain to the Town Property, as such agreements may be amended.

(d) The development and construction of the Town Property would not be undertaken by Developer, and in the opinion of Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to Developer provided for in this Agreement.

(e) Developer shall not file an application for an allocation of low-income housing tax credits with CHFA without the prior written consent of the Town.

(f) Developer will obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met for the construction and operation of the Residential Project.

(g) There is no litigation, proceeding or investigation contesting the power or authority of Developer or their officers with respect to the Residential Project or this Agreement, and Developer are unaware of any such litigation, proceeding or investigation that has been threatened.

(h) Developer will require the design and construction contractor for the Residential Project to ensure that all construction documents related to the Residential Project are in accord with applicable laws, codes and regulations and that construction of the Residential Project will be completed in accordance with such laws, codes and regulations.

(i) In the event the Federal Drug Free Workplace Act of 1988 and the regulations promulgated thereunder, including without limitation, 54 Code of Federal Regulations 4956 (1989), as such Act and regulations have been amended are applicable, Developer has complied with and shall comply with such Act.

(j) Developer represents and warrants that it and its affiliates are (i) in compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the Treasury's Office of Foreign Assets Control ("OFAC"), including, without limitation, Executive Order 13224, (ii) not on the Specially Designated Nationals and Blocked Persons List maintained by OFAC, and (iii) not otherwise identified by a government entity or legal authority as a person with whom a U.S. Person is prohibited from transacting business. "U.S. Person" shall mean any United States citizen, any permanent resident alien, any entity organized under the laws of the United States (including foreign branches), or any person in the United States.

(k) At all times during the terms of this Agreement, Developer shall comply with and assure that the Residential Project shall comply with the provisions of the Fair Housing Act and the Americans with Disabilities Act.



(l) NHPF has complied with, and as of the date hereof is in compliance with, applicable Transparency Laws and related laws, including without limitation by the timely making of all filings (including without limitation any updates, amendments and supplements thereto) required by applicable Transparency Laws and, such filings are, true, correct and complete. “Transparency Laws” herein mean (a) The U.S. Corporate Transparency Act, 31 U.S.C.A. Section 5336, et seq., and the regulations (31 C.F.R. Section 1010.380), official guidance, and official interpretations promulgated thereunder or published with respect thereto and (b) any substitute or similar law (including any regulations, official guidance, and official interpretations promulgated thereunder or published with respect thereto) applicable to NHPF, in each case, as amended and in effect from time to time.

Section 7.02 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 determined that there is a critical need for additional housing affordable for both low-income and middle-income residents in its community and that it is the Town’s burden to address the need for such housing.

(c) The Town has determined that the development of the Town Property into affordable housing as described in this Agreement will lessen the burdens of the Town to provide affordable housing for low-income and middle-income residents.

(d) 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.

(e) 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.

(f) 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, including the County IGA, 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 7.03 Representations and Warranties by FCHDA. FCHDA represents and warrants that:

(a) FCHDA is a body corporate and politic validly existing under the laws of the State of Colorado.

(b) FCHDA has determined that there is a critical need for additional housing affordable for both low-income and middle-income residents in its jurisdiction.

(c) FCHDA has determined that the development of the Town Property into affordable housing as described in this Agreement will lessen the burdens of FCHDA to provide affordable housing for low-income and middle-income residents.

(d) FCHDA has the power to enter into and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder.

(e) There is no litigation, proceeding or investigation contesting the power or authority of FCHDA or its officials to enter into or consummate the transactions contemplated by this Agreement, and FCHDA is unaware of any such litigation, proceeding or investigation that has been threatened.

(f) 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 FCHDA or to FCHDA'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 FCHDA 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 FCHDA.

## **SECTION 8      EVENTS OF DEFAULT.**

Section 8.01 Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(a) Subject to Unavoidable Delays, failure by Developer to commence construction of the development of the Town Property in accordance with the terms of this Agreement;

(b) If any representation or warranty by Developer herein or any document or certificate furnished to the Town proves at any time to be incorrect or misleading as of the date made;

(c) If Developer engages in any illegal activities;

(d) Failure of Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, including but not limited to compliance with the requirements set forth in Section 3; and

(e) If, prior to completion of the development of the Town Property, NHPF or NHPF Galena shall:

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(ii) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of NHPF or NHPF Galena, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within 60 days after the filing thereof; or a receiver, trustee or liquidator of NHPF or NHPF Galena, or part thereof, shall be appointed in any proceeding brought against NHPF or NHPF Galena and shall not be discharged within 60 days after such appointment, or if NHPF or NHPF Galena shall consent to or acquiesce in such appointment.

Notwithstanding anything to the contrary set forth in this Agreement, the lenders providing construction or permanent financing shall have the right, but not the obligation, to cure an Event of Default during the applicable cure period provided for Developer and the Town shall accept such cure as though it was made by Developer.

Section 8.02 Remedies on Default. Whenever any Event of Default occurs and is continuing, the Town, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice to Developer, but only if the Event of Default has not been cured within said thirty (30) days; provided that if such Event of Default cannot be reasonably cured within the thirty (30) day period, and Developer has provided reasonable assurances to Town that it is proceeding with due diligence to cure such default, such thirty (30) day cure period shall be extended for an additional period deemed reasonably necessary by the Town to effect the cure, but in any event not to exceed an additional sixty (60) days:

(a) The Town may suspend its performance under this Agreement until such default is cured or the Town determines that it has received adequate assurances from Developer, that Developer will cure its default and continue its performance under this Agreement;

(b) The Town may terminate this Agreement, accelerate repayment of the Town Loan, and terminate the Ground Lease;

(c) The Town may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement.

Section 8.03 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Town is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 8.04 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

## **SECTION 9 RESTRICTIONS ON ASSIGNMENT AND TRANSFER.**

Developer 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. 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 Developer hereunder and upon any such full assumption of obligations, Developer shall be released from all obligations hereunder only if Developer no longer has an ownership interest in the Town Property. Any sale, transfer, assignment, pledge or hypothecation of an interest in NHPF Galena that results in a change in control of that entity will constitute an assignment of this Agreement. However, NHPF shall have the right to assign or transfer its interest in the Town Property to any entity that it controls.

## **SECTION 10 INDEMNIFICATION OF TOWN AND TOWN HOUSING AUTHORITY.**

### **Section 10.01**

(a) Developer releases from and covenants and agrees that the Town, its affiliated entities (including FCHDA), its governing bodies' members, and its 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 resulting from any defect in the Town Property. Developer's indemnification obligation does not apply to the extent an Indemnified Party is determined to have committed willful or wanton misconduct.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, Developer 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 Developer (or 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 Town Property, including, without limitation, any pecuniary loss or penalty.

(c) In furtherance of the foregoing, Developer acknowledges that the Town is responsible for performing in accordance with the terms and conditions of the County IGA and the Grant Agreements. Developer shall indemnify the Town from any claims made under the County IGA or the Grant Agreements arising out of the actions or omissions of Developer. Notwithstanding the foregoing, the Town shall not be indemnified (i) if it sustains any harm related to the unauthorized withdrawal of FCHDA as an owner of membership or partnership interests in NHPF Galena, or (ii) with respect to claims arising out of actions taken by the Town in its quasi-judicial capacity.

Section 10.02 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 10.03 If a party defaults under any of the provisions of this Agreement, and the other party employs attorneys or incurs other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement contained in this Agreement, the defaulting party will within thirty (30) days of request therefor reimburse the non-defaulting party for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 10.04 All provisions of this Section 10 shall survive the termination of this Agreement.

## **SECTION 11 MISCELLANEOUS.**

Section 11.01 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 Notice Address 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" below, 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. Each Notice Address for purposes of this Agreement shall be as set forth below, unless changed in by written notice by the applicable party;

Town: Town of Frisco  
P.O. Box 4100  
Frisco, Colorado 80443  
Attn: Community Development Director

With a copy to: Thad W. Renaud, Esq.  
Murray Dahl Beery & Renaud LLP  
710 Kipling Street, Suite 300  
Lakewood, CO 80215

Developer: NHPF Galena, LLC  
c/o The NHP Foundation  
Attn: Neal Drobenare  
1090 Vermont Ave NW, Suite 400  
Washington DC 20005

With a copy to: New Communities Law PLLC  
1919 14th Street, Suite 700  
Boulder, CO 80302  
Attn: Ben Doyle, Esq.

Section 11.02 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 11.03 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 11.04 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 11.05 Town Not a Partner; Developer 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 Developer, Developer will not be the agent of the Town, and the Town will not be responsible for any debt or liability of Developer.

Section 11.06 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 11.07 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 11.08 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 11.09 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 11.10 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 11.11 Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

Section 11.12 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 11.13 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 11.14 Entire Agreement. This Agreement, together with its exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to its subject matter, namely, redevelopment of the Town Property. It supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. For avoidance of doubt, nothing in this Agreement affects redevelopment of the Developer Property.

(The remainder of this page has intentionally been 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 Developer 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 Nell, Town Clerk

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

STATE OF COLORADO     )  
  ) ss  
COUNTY OF SUMMIT     )

The foregoing instrument was acknowledged before me as of the \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Frederick J. Ihnken, as Mayor, and Stacey Nell, 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: \_\_\_\_\_



FRISCO COMMUNITY HOUSING  
DEVELOPMENT AUTHORITY,  
a Colorado body corporate and politic

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

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

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

STATE OF COLORADO     )  
  ) ss  
COUNTY OF SUMMIT     )

The foregoing instrument was acknowledged before me as of the \_\_\_\_\_ day of \_\_\_\_\_,  
2025, by \_\_\_\_\_, as \_\_\_\_\_ of  
the Frisco Community Housing Development Authority, a Colorado body corporate and politic.

WITNESS my hand and official seal.

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

My Commission Expires: \_\_\_\_\_

THE NHP FOUNDATION,  
a District of Columbia nonprofit corporation

By: \_\_\_\_\_  
Neal Drobenare, Senior Vice President

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me as of the \_\_\_\_ day of \_\_\_\_\_, 2025, by Neal Drobenare, Senior Vice President of The NHP Foundation, a District of Columbia nonprofit corporation.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: \_\_\_\_\_

NHPF GALENA, LLC,  
a Colorado limited liability company

By: The NHP Foundation,  
Manager

By: \_\_\_\_\_  
Neal Drobenare, Senior Vice President

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me as of the \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Neal Drobenare, Senior Vice President of The NHP Foundation, manager of NHPF Galena, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

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

My Commission Expires: \_\_\_\_\_

**Exhibit A**

**LEGAL DESCRIPTION OF TOWN PROPERTY**

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**

**COPY OF**

**COUNTY IGA**

SLFRF AGREEMENT

MHN AGREEMENT

(attached)

**Exhibit C**

**GROUND LEASE FOR TOWN PROPERTY**

(attached)

**Exhibit D**

**FORM OF TOWN AFFORDABLE HOUSING COVENANT**

(attached)

**DECLARATION OF RESTRICTIVE COVENANTS  
FOR AFFORDABLE RENTAL HOUSING  
(602 Galena)**

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR AFFORDABLE RENTAL HOUSING (602 Galena) (this “Restrictive Covenant”) dated \_\_\_\_\_, 2025, is made by the Town of Frisco, a Colorado municipal corporation (the “Town”).

Recitals

A. The Town is the owner of the real property described in Section 1 of this Restrictive Covenant (the “Property”);

B. The Town and the Frisco Community Housing Development Authority have entered into the Second Amended and Restated Development Agreement (602 Galena) (the “Development Agreement”) with The NHP Foundation, a District of Columbia nonprofit corporation, and NHPF Galena, a Colorado limited liability company (collectively, the “Developer”), dated on or about March \_\_\_, 2025, whereby the Town provides certain incentives to Developer for the construction and operation of an affordable housing development specifically intended to provide affordable workforce housing as further set forth herein (the “Project”);

C. It is a condition of the Development Agreement and of the Town’s approval of the land use application made by Developer for the Project that the Property is restricted by this Restrictive Covenant and that the Property be used hereafter as limited hereby; and

D. If required for the construction of the project, the Developer may enter into a regulatory agreement (the “Regulatory Agreement”) restricting the use of Units (defined below) as more specifically described therein. Any conflict between this Restrictive Covenant and the Regulatory Agreement shall be resolved in favor of the Regulatory Agreement, provided that no Unit (as defined below) in the Project may be occupied except by a Qualified Occupant (defined below).

NOW, THEREFORE, the Town declares as follows:

1. Property Subject to Covenant. This Restrictive Covenant applies to the following real property located in the Town of Frisco, Summit County, Colorado:

LOTS 13, 14, 15, 16, 17, 18, 19, 20 AND 21, BLOCK 3, FRISCO TOWN  
SUBDIVISION, COUNTY OF SUMMIT, STATE OF COLORADO

Also known as: 602 GALENA STREET, FRISCO, CO, 80433

2. Definitions. In addition to those terms that are defined parenthetically, as used in this Restrictive Covenant:

“Area Median Income” or “AMI” means the median annual income for Summit County, Colorado (or such next larger statistical area calculated by HUD that includes the



County, if HUD does not calculate the area median income for the County on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD (or any successor index thereto acceptable to the Town, in its reasonable discretion).

“County” means Summit County, Colorado.

“Dependent” means a person, including a child, step-child, or a child in the permanent legal custody of a person lawfully residing in a Unit in compliance with the terms and conditions of this Restrictive Covenant. A Dependent must occupy the Unit as his or her place of residence, and be financially dependent upon the support of the legal resident. Dependent shall also include any person included within the definition of “Familial Status” as defined in 42 U.S.C. § 3602(k), as that act shall from time to time be amended.

“HUD” means the U.S. Department of Housing and Urban Development.

“Property” means the real property described in Section 1 of this Restrictive Covenant.

“Qualified Occupant” means (i) a natural person aged 18 or older, along with the Qualified Occupant’s roommates, if any, (and their respective Dependents) who at all times during occupancy of a Unit, earns a living from a business operating in and serving the Summit County area, by working at such business an average of at least thirty (30) hours per week on an annual basis; or (ii) for individuals claiming self-employment, their employment must be at least thirty (30) hours per week on an annual basis for a legally formed business entity provided such entity is approved by the Town in writing as having demonstrated that its principal place of business is located within Summit County, and provides a significant amount of goods and/or services locally within Summit County to the residents, property owners, or visitors located in Summit County, whether or not for profit. If a person is a work from home employee for a business, the person must work at least thirty (30) hours per week on an annual basis in Summit County, be approved in writing by the Town, and the business must provide a significant amount of goods and/or services to the residents, property owners, or visitors of Summit County, whether or not for profit. A Qualified Occupant who becomes disabled after commencing occupancy of a Unit such that the Qualified Occupant cannot work the required number of hours each week required by this Restrictive Covenant shall remain a Qualified Occupant; provided that such person is permitted to occupy the Unit only for a maximum period of one (1) year following the commencement of said person’s disability, unless a longer period of occupancy is authorized by the Town, based on the submittal of medical documentation that substantiates the disability and the inability to resume working the number of hours each week required by this Restrictive Covenant. The Town or its designee shall have the discretion to determine any person’s eligibility as a Qualified Occupant under this section and may request such evidence as is necessary to make said determination.

“Priority Employee” means (i) a natural person aged 18 or older, along with the Priority Employee’s roommates, if any, who at all times during occupancy of a Unit, earns a living from a business operating in and serving the Town, by working at such business an average of at least thirty (30) hours per week on an annual basis; or (ii) for individuals claiming self-employment, their employment must be at least thirty (30) hours per week on an annual basis for a legally formed business entity provided such entity is approved by the Town in writing as having demonstrated that its principal place of business is located within the Town, and provides a significant amount of goods and/or services locally within the Town to the residents, property owners, or visitors located in the County, whether or not for profit. If a person is a work from home employee for a business, the person must work at least thirty (30) hours per week on an annual basis in the Town, be approved in writing by the Town, and the business must provide a significant amount of goods and/or services to the residents, property owners, or visitors of the Town, whether or not for profit. A Priority Employee who becomes disabled after commencing occupancy of a Unit such that the Priority Employee cannot work the required number of hours each week required by this Restrictive Covenant shall remain a Priority Employee; provided that such person is permitted to occupy the Unit only for a maximum period of one (1) year following the commencement of said person’s disability, unless a longer period of occupancy is authorized by the Town, based on the submittal of medical documentation that substantiates the disability and the inability to resume working the number of hours each week required by this Restrictive Covenant. The Town or its designee shall have the discretion to determine any person’s eligibility as a Priority Employee under this section and may request such evidence as is necessary to make said determination.

“Town Employee” means a natural person aged 18 or older, along with the Town Employee’s roommates, if any, who at all times during occupancy of a Unit, earns a living as an employee of the Town (or affiliates thereof), by working at least thirty (30) hours per week on an annual basis. A Town Employee who becomes disabled after commencing occupancy of a Unit such that the Town Employee cannot work the required number of hours each week required by this Restrictive Covenant shall remain a Town Employee; provided that such person is permitted to occupy the Unit only for a maximum period of one (1) year following the commencement of said person’s disability, unless a longer period of occupancy is authorized by the Town, based on the submittal of medical documentation that substantiates the disability and the inability to resume working the number of hours each week required by this Restrictive Covenant. The Town or its designee shall have the discretion to determine any person’s eligibility as a Town Employee under this section and may request such evidence as is necessary to make said determination.

“Unit” means a residential unit located on the Property.

3. Purpose of Occupancy and Rent Restrictions. The purpose of this Restrictive Covenant is to restrict the occupancy of each Unit in such a fashion as to provide, on a permanent basis, reasonably priced housing for Qualified Occupants, or to individuals who, because of their income, may not otherwise be in a position to afford to occupy or lease other similar properties and to help establish and preserve a supply of workforce housing to help meet the needs of the locally employed residents of the Town of Frisco or the wider Summit County area. This Restrictive Covenant shall be interpreted and enforced in accordance with this purpose.

4. Tenant and Occupancy Restrictions. The following provisions shall apply to the extent not otherwise prohibited by Federal or state law, including, without limitation, fair housing laws:

A. Each of the Units shall be rented by the Developer only to a Qualified Occupant; and

B. Each of the Units shall at all times be occupied by (or held available for occupancy by) at least one Qualified Occupant as a principal residence, and said Qualified Occupant's roommates and temporary guests, if any; provided, however, if a tenant's lease term commences and the tenant is a Qualified Occupant, but during the term of the lease fails to continue to be a Qualified Occupant, the Developer shall be under no obligation to terminate the lease during the term, but the Developer shall not renew said tenant's lease, subject to applicable tenant protections required under applicable law.

Notwithstanding the foregoing, in the event the Developer is unable to lease a Unit to a Qualified Occupant after 30 calendar days, during which the Developer used commercially reasonable efforts to lease the Unit in question to a Qualified Occupant, the Developer may lease the Unit in question to another prospective tenant meeting the AMI set asides for a term of one year.

5. Rent Restriction and Income Limitations.

A. *Rent Restriction in line with HUD Multifamily Tax Subsidy Rents.* Throughout the term of this Restrictive Covenant, subject to the potential partial inapplicability set forth in Section 7 below, each Unit shall be rented only to a Qualified Occupant for a monthly rental amount (excluding tenant-paid utilities) that is equal to or less than the maximum rental amount that is permitted to be charged hereunder with 100% of the Units rented at 120% AMI rent (excluding utilities). For example, if a two-bedroom Unit is set aside for someone making at or below 120% AMI, the rental amount shall be as determined by HUD for a 120% AMI unit that is two bedrooms and located in Summit County, Colorado. To the extent HUD does not publish rent limits for a specific set-aside, it will be extrapolated from rents published by HUD (e.g. the rent for 100% Units will be double the amount of rent set for units affordable to individuals or families whose income is 50% AMI, as published by HUD). In the event the rent limit cannot be extrapolated from HUD-published rent limits, then the methodology set forth in Section 5(B) shall govern.

B. *Rent Restriction if HUD Rents are Unavailable.* In the event HUD has not provided a specific rental maximum or if HUD rent maximums are otherwise inapplicable or unavailable, then the maximum permissible rental amounts (excluding utilities) for Units with a rent limit will be determined in accordance with the following:

1. Determine the AMI in effect immediately prior to the beginning of the term of each sublease or rental of the Unit (but in no event less than the highest amount of HUD published rent levels commencing in 2025 through the time of rent-up); and
2. Multiply the AMI times the applicable AMI set aside (i.e., 120%)
3. Multiply that amount by 30%; and

4. Divide the product thereof by 12 to obtain the maximum permissible monthly rent (excluding utilities) for such Unit.

In the event AMI is flat or declines, as compared to the prior period, the maximum permissible monthly rental (excluding utilities) may increase by no more than three percent (3%) over the prior year, provided that if the annual percentage increase in the Denver-Aurora-Lakewood Consumer Price Index ("CPI") or its successor index reported for the most recent quarter is more than three percent (3%), the permissible monthly rent may increase by an amount over the prior year that equals the percentage increase in the CPI. In such event, the Developer will consider market conditions when determining whether to increase monthly rent and, if so, to what extent; provided, however, that such determination shall be made in the Developer's sole and absolute discretion.

*C. Income Limitation on the Units.* The Units shall be leased only to Qualified Occupants earning at or below 120% of the AMI in the first year of their occupancy.

*D. Town of Frisco Master Lease and Preference for Local Employees.*

1. Upon written request of the Town, the Developer shall enter into one or more master lease(s) with the Town and/or an entity affiliated with the Town for which the Town is contractually obligated to provide housing, or of which the Town has assigned this benefit, for up to five (5) total Units. Unless otherwise agreed to in the sole discretion of the Developer, any master lease(s) that may be entered into pursuant to this subparagraph shall be at the same rates and charges that would be applicable to a lease that complies with this Restrictive Covenant for the Unit to be leased individually to a Qualified Occupant. Any such master lease shall be conditioned on occupancy of the subject unit by a Qualified Occupant in accordance with this Restrictive Covenant.

2. Upon a Unit becoming available for rent, the Developer will offer to Town Employees for at least ten (10) business days; and if not rented within that timeframe, then for the next five (5) business days the Developer will offer the Units to Priority Employees; finally, thereafter, the Developer may rent the Unit to any Qualified Occupant. For the avoidance of doubt, the business day periods set forth herein shall begin to toll when the Town Manager is notified in writing by the Developer of the availability.

*E. Matching Tenants to Units.* At the time of application, each tenant will provide the tenant's current income to the Developer or its property manager. The Developer shall cause its property manager to identify the most appropriate Unit that is available for the income stated. The prospective tenant will ultimately decide whether to enter into a lease for that identified Unit at the then-applicable rate.

6. Additional Lease Restrictions. The Town and the Developer further agree that:

A. A Qualified Occupant may not sublease all or any portion of the rented Unit; and

B. A Unit may not be rented for an initial nor renewal term of fewer than 90 days.

All subleases or rentals of a Unit not in compliance with the requirements of this Section 6 are void, and a violation of this Restrictive Covenant.

7. Regulatory Agreement. The beneficiary of the Regulatory Agreement shall enforce the terms of the Regulatory Agreement, if any, and the Town shall enforce the terms of this Restrictive Covenant. The Regulatory Agreement and this Restrictive Covenant shall not be deemed to conflict merely because one provides for greater, lesser, or different restrictions or obligations than the other where compliance with both is possible.

8. Records.

A. The Town may examine, inspect, and copy the Developer's records concerning the use and occupancy of the Units upon reasonable advance notice.

B. The Developer will submit to the Town any information, document, or certificate regarding the occupancy and use of the Units which the Town reasonably deems to be necessary to confirm the Developer's compliance with the provisions of this Restrictive Covenant (which may be in the form of a copy of information, document, or certificate provided by the Developer to the bond issuer during the term of the Regulatory Agreement, if any).

C. The Town's rights under this Section 8 may also be exercised by the Town's authorized agent.

9. Default; Notice.

A. If the Developer fails to comply with this Restrictive Covenant, the Town may notify the Developer by written notice of such failure (including a writing in e-mail) and provide the Developer a period of time to correct such failure. If the failure is not corrected to the satisfaction of the Town within the specified time, which will be at least 30 days but not more than 60 days after the date the Town mails the written notice to the Developer, or within such longer time as the Town determines is necessary to correct the violation (but not to exceed any limitation set by applicable law), the Town may, without further notice, declare a default under this Restrictive Covenant effective on the date of such declaration of default. The Town may then proceed to enforce this Restrictive Covenant, subject to any applicable "tenant protections" required by applicable law.

B. Concurrently with the issuance of a written notice to Developer pursuant to section A of this Section 9, the Town shall also provide a copy of such notice to any lender with a recorded interest in the Property, and to the Developer's investor member (if applicable) if the Developer has provided notice to the Town of the identity of such investor member. Such lender may, but shall not be required to, correct the Developer's violation of this Restrictive Covenant to the satisfaction of the Town within the specified time, which will be at least 30 days but not more than 60 days after the date the Town mails the written notice to the lender, or within such further time as the Town determines is necessary to correct the violation (but not to exceed any limitation set by applicable law).

10. Town Authority to Enforce. The restrictions, covenants, and limitations created by this Restrictive Covenant are only for the benefit of the Town. Only the Town or its designated agents may enforce this Restrictive Covenant. The Developer shall provide a report, no later than September 1 of each calendar year or other mutually agreeable date, that illustrates the rental status of each unit and rental rate.

11. Equitable Relief. The Town may specifically enforce this Restrictive Covenant. The Town may obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction, and permanent injunction to obtain specific performance. Any equitable relief provided for in this Section may be sought singly or in combination with such legal remedies as the Town may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Colorado.

12. Waiver; Termination; Modification of Covenant. During the term of this Restrictive Covenant, the restrictions, covenants, and limitations hereof may be waived, terminated, or modified only with the written consent of the Town. No waiver, modification, or termination pursuant to this section will be effective until the proper instrument is executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado.

13. Statute of Limitations. The Developer hereby waives the benefit of and agrees not to assert in any action brought by the Town to enforce this Restrictive Covenant any applicable statute of limitation, including, but not limited to, the provisions of Section 38-41-119, C.R.S. If any statute of limitation may lawfully be asserted by the Developer in connection with an action brought by the Town to enforce the terms of this Restrictive Covenant, each day during which any violation of this Restrictive Covenant occurs is to be deemed to be a separate breach of this Restrictive Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

14. Waiver. The failure of the Town to exercise any of its rights under this Restrictive Covenant shall not be a waiver of those rights. The Town may waive its rights under this Restrictive Covenant by a signed instrument specifically waiving its rights.

15. Attorney's Fees. If any action is brought in a court of law by either party concerning the enforcement, interpretation, or construction of this Restrictive Covenant, the prevailing party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

16. Notices. All notices provided for or required under this Restrictive Covenant must be in writing, signed by the party giving the notice, and will be deemed properly given when received or two (2) days after mailed, postage prepaid, certified, return receipt requested, addressed to the parties hereto at their addresses appearing on the signature pages. Each party, by written notice to the other party, may specify any other address for the receipt of such instruments or communications. E-mail is a valid method of giving notice under this Restrictive Covenant.

17. Recording And Filing; Covenant Running With The Land.

A. This Restrictive Covenant is to be recorded in the real property records of Summit County, Colorado.

B. The regulatory and restrictive covenants contained in this Restrictive Covenant are covenants running with the land and are binding upon the Developer, and the Developer's successors and assigns in and to the Ground Lease under which Developer holds a possessory interest in the Property, or any other interest in the Property. All requirements of privity of estate are intended to be satisfied, or in the alternative, an equitable servitude is created to ensure that these restrictions run with the land.

18. Applicable Law. This Restrictive Covenant is to be interpreted in accordance with the laws of the State of Colorado without regard to its conflict of laws rules.

19. Vesting and Term. The Town's rights and interests under this Restrictive Covenant are vested immediately, and this Restrictive Covenant, and any amendments hereto, are binding and in full force and effect in perpetuity, unless terminated as provided in Section 12. Each provision contained in this Restrictive Covenant that is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation will continue and remain in full force and effect for the period of twenty-one years following the death of the last survivor of the issue of President Donald J. Trump, and the now living children of said issue, or until this Restrictive Covenant is terminated earlier by recorded instrument as provided in Section 12.

20. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Restrictive Covenant.

21. Terminology. Wherever applicable, the pronouns in this Restrictive Covenant designating the masculine or neuter apply equally to all genders. Wherever applicable within this Agreement, the singular includes the plural, and the plural includes the singular.

22. Severability. If any provision of this Restrictive Covenant is finally determined to be invalid, illegal, or unenforceable, such determination does not affect the remaining provisions of this Restrictive Covenant.

23. Binding Effect. This Restrictive Covenant is binding upon and inures to the benefit of the Town, the Developer and their successors and assigns in and to the Property.

24. Authority. The execution of this Restrictive Covenant has been approved by the Town Council of the Town of Frisco under its approval of the Development Agreement.

TOWN OF FRISCO,  
a Colorado municipal corporation

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

ATTEST:

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

Town's Address:

P.O. Box 4100  
1 East Main Street  
Frisco, CO 80443

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF SUMMIT     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by Frederick J. Ihnken, as Mayor of the Town of Frisco, a Colorado municipal corporation.

WITNESS my hand and official seal.

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

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



**Exhibit E**

**FORM OF TOWN LOAN DOCUMENTS**

(attached)

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