



denver

1981 Blake Street
Denver, CO 80202
303.297.chfa (2432)
800.877.chfa (2432)

PO Box 60
Denver, CO 80201
800.659.2656 tdd
www.chfainfo.com

western slope

348 Main Street
Grand Junction, CO 81501
970.241.2341
800.877.8450

**AFFORDABLE HOUSING FINANCING FUND
LAND BANKING PROGRAM**

SECOND AMENDED AND RESTATED GRANT COMMITMENT

March 3, 2025

Via Email Only

Town of Frisco, CO
PO Box 4100
Frisco, CO 80443
Attention: Leslie Edwards
Email: leslieE@townoffrisco.com

Re: Grant in the amount of \$5,000,000

Dear Leslie:

Colorado Housing and Finance Authority (the “**Authority**”) has been retained by the Colorado Office of Economic Development and International Trade (OEDIT) as the administrator of the Affordable Housing Financing Fund (“**Fund**”). This Fund was created by a new statewide Affordable Housing Statute (CRS 29-32-101 et seq) (“**Statute**”) which was voted on and approved by Colorado voters in a November 2022 ballot measure commonly known as Proposition 123. The Land Banking Program (the “**Program**”), as part of Proposition 123, provides funding for the acquisition and preservation of land for the development of affordable rental housing, affordable homeownership, and/or mixed commercial use (if the predominate use is affordable housing).

The Authority hereby notifies you of its approval of your request for a grant (the “**Grant**”) under the Program for the acquisition and/or preservation of land for the development of 101 W Main located at 101 W. Main, Frisco, CO (the “**Project**”) subject to each of the terms and conditions provided below.

1. Grantee. Town of Frisco, Colorado.
2. Grant Amount. An amount not to exceed Five Million and no/100 Dollars (\$5,000,000), provided that the final grant amount shall be determined after the Authority’s review of a satisfactory appraisal of the Project (in accordance with the Authority’s appraisal guidelines, to be ordered by the Grantee at Grantee’s expense), and may be lower than the amount set forth above based on the Authority’s review of such appraisal.
3. Milestones. As condition of the Grant, Grantee must meet the following milestones:

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- a. Initial Milestones. Within five (5) years of the Grant closing (the “**Initial Deadline**”), the Project must be properly zoned for the proposed Project use, and a development plan for the Project must be submitted to and approved by the Authority (collectively, “**Initial Milestones**”); and
- b. Final Milestones. Within ten (10) years of the Grant closing (the “**Final Deadline**”), the Project must be properly permitted and the construction loan for the Project must be closed and funded (collectively, the “**Final Milestones**”). The Initial Milestones and Final Milestones are collectively referred to herein as the “**Milestones**”.

Failure to meet the Initial Milestones or Final Milestones could impact future awards under the Program.

4. Grant Repayment. Grantee must repay the Grant in full if the Authority determines that Grantee failed to timely and properly meet each of the Milestones. If the Initial Milestones are not timely or properly met, then repayment is due within six (6) months of the Initial Deadline. If the Final Milestones are not timely or properly met, then repayment is due within six (6) months of the Final Deadline. If the Grant is paid in full prior to the Final Deadline, the Restrictive Covenant (defined below) will be released and the Program’s restrictions on the Project’s use will terminate.
5. Grant Fees. The Grantee shall pay any and all of the Authority’s and OEDIT’s third-party costs, including but not limited to, appraisal fees, attorneys’ fees and costs, title company premiums and closing fees, environmental search charges, recording costs, and UCC search charges, as applicable (the “**Closing Costs**”).
6. Commitment Expiration. July 31, 2025.
7. Program Requirements. Grantee must meet all Program requirements including, but not limited to the following:
 - a. Reporting. Grantee must comply with the Program reporting requirements described on Exhibit B.
 - b. Grantee Eligibility. Grantee must be either a local or tribal government.
 - c. Project Eligibility. The Project must be developed as affordable rental housing, affordable for sale housing, or commercial mixed use with a residential component. If the Project is commercial mixed use, then the Predominate Use must be affordable housing though market rate or non-restricted housing or rent restricted housing above 60% area median income (“**AMI**”) may be included in the allowable residential mixed-use space. “**Predominate Use**” as used herein means at least 70% of the Project’s improved space or units, unless otherwise agreed to in writing

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- by the Authority. The commercial use of a mixed-use project must be complementary to the affordable housing use and must be approved by the Authority in advance in the Authority's sole discretion.
- d. Environmental Sustainability Requirements. The Project must meet environmental sustainability requirements as more fully set forth in Paragraph 10.b for the year the Project begins construction, which requirements may be adjusted by the Authority specifically for the Program.
 - e. Restrictive Covenant. A restrictive covenant as set forth in Paragraph 8 (the "**Restrictive Covenant**") shall be recorded against the Project.
8. Restrictive Covenant. A Restrictive Covenant shall be recorded against the Project in the official records of the county where the Project is located at the closing of the Grant. All covenants and payment liens shall be subordinate to the Authority's Restrictive Covenant. The Restrictive Covenant shall include, but not be limited to, the following provisions:
- a. Affordability Term.
 - (i) The Restrictive Covenant will be required to remain of record so long as the Grant remains outstanding. The Restrictive Covenant may be released if the Grant is repaid.
 - (ii) If the Project as developed includes rental units, the Restrictive Covenant shall restrict the affordability of such rental housing units as set forth in paragraph 8.b below for at least 40 years after the final improvements are constructed and occupied, unless otherwise agreed to by the Authority.
 - (iii) If the Project as developed includes homeowner units, the Restrictive Covenant will restrict the homeowner units to remain affordable as set forth in paragraph 8.b below for at least 40 years after the final improvements are constructed and occupied, through a ground lease or similar structure each as approved by the Authority, unless otherwise agreed to by the Authority.
 - (iv) If the Project site has pre-existing improvements, then it must comply with each of the foregoing affordability requirements as more fully set forth in the Restrictive Covenant.
 - (v) The Project may request a reduction to the term of the Covenant as stated in 8.a.(ii) and/or 8.a.(iii) to twenty (20) years by providing a market analysis that supports such reduction. The Authority may grant or deny this request in the Authority's sole discretion.
 - b. AMI. If the Project includes rental units, then the annual income of such households may not exceed 60% AMI. If the Project includes homeowner units, then the annual income of such households may not exceed 100% AMI.

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- c. Other Conditions. If the Project will be a commercial/mixed-use project, the commercial use shall be compatible with affordable housing and must be approved in advance of development by the Authority in its sole discretion. The affordable housing component of the commercial/mixed-use project shall be more than seventy percent (70%) of the improved space/units of the Project.
 - d. Rural Resorts. In the event the Project is located in a rural resort area, the Grantee/Project must receive approval from Colorado Department of Housing/Department of Local Affairs to exceed the program AMI limits as set forth in paragraph 8.b. above. Copies of such approval shall be submitted to the Authority for review and approval.
9. Documents. The Authority will prepare the closing documents and coordinate the closing with Grantee as set forth herein. Exhibit A to this commitment lists certain documents that: (i) must be provided by the Grantee to the Authority prior to closing (the "**Pre-closing Documents**"); and (ii) must be signed and delivered by the Grantee to the Authority at closing (the "**Closing Documents**"). The Pre-Closing Documents must be delivered to the Authority by the Grantee in form satisfactory to the Authority.

When the Pre-Closing Documents have been received and approved by the Authority, the Authority will prepare the Closing Documents for review by the Grantee and schedule a closing date, which will be no sooner than ten (10) business days after receipt of complete and satisfactory Pre-Closing Documents and satisfaction of all closing conditions to be completed prior to Closing.

10. Closing; Source of Funds and Condition of Funding. As a condition precedent to the closing of the Grant, all conditions hereunder shall have been met, each of the Pre-Closing Documents shall be received, reviewed and approved by the Authority, and each of the Closing Documents listed in Exhibit A, in form and substance satisfactory to the Authority, shall be executed and delivered to the Authority. In addition, at the Closing, the Grantee shall pay Closing Costs by wire transfer. The Authority reserves the right at all times to decline to close the Grant if the Authority determines, in its sole judgment, that the Grantee or the Grant does not strictly conform to the requirements of this Commitment, the Program, the Land Banking Guidelines (the "**Guidelines**"), any related requirements of OEDIT or the Authority and any and all other applicable legal and regulatory requirements relating to Proposition 123 or otherwise (the "**Regulations**"). Further, the Grant will be funded with Program funds. If all or a portion of the Program funds allocated for the Grant (the "**Funds**") are withheld or revoked prior to Closing, the Authority would not be willing to provide the Grant to the Grantee at the terms set forth herein; therefore, the Authority reserves the right, at all times, to decline to close and fund the Grant if the Authority has not received all or a portion of the Funds, or if all or a portion of the Funds have been revoked.

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The Closing Documents may include, without limitation the following provisions:

- a. The following uses and activities shall not be conducted in or on the Project: (i) activities which are illegal under federal, state or local laws; (ii) selling, producing, or displaying sexually oriented material (e.g., adult book stores, adult video stores, adult theaters, etc.); (iii) non-medical massage services; (iv) a business generating greater than twenty-five percent (25%) of its revenues from the sale of alcoholic beverages not manufactured on-site or from selling alcoholic beverages for consumption off premises; (v) a business or organization that discriminates in its membership or facility usage on the basis of race, color, national origin, religion, gender, age, disability, citizenship status, marital status, sexual orientation, or any other status protected by law; (vi) gambling activities (not including sale of state sanctioned lottery tickets); (vii) selling or dispensing products illegal under federal, state or local laws; (ix) religious services, instruction or overtly sectarian activities; (x) pawn brokering; (xi) making “payday” or short term loans by an entity that is not a bank, credit union, savings and loan or other banking institution; and (xii) escort services.

- b. Each of the following is required to meet the Environmental Sustainability Standards for the Project and the Project shall be designed to meet the requirements as follows:
 - (i) Certification from one of the following*:
 - 1. 2020 Enterprise Green Communities (EGC)
 - 2. Leadership in Energy and Environmental Design LEED v.4.1 (LEED)
 - 3. National Green Building Standards NGBS ICC-700-2020 (NGBS)
 - 4. Zero Energy Ready Homes standard (US DOE)
 - (ii) All-electric building using high efficiency electric appliances such as heat pumps and heat pump water heaters, or a mixed-fuel building that includes pre-wiring for efficient electric heating and appliances and includes pre-wiring to enable future installation of EV charging station(s) for at least 10% of parking spots or greater if required under local codes.
 - *Developments that achieve all-electric construction with high-efficiency electric appliances may opt-out of a formal green building certification.
 - (iii) Utilize water-efficient design inside and outside. Full guidance can be found at coloradowaterwise.org.
 - (iv) Developments should be located within a half-mile of existing or planned transit corridors.

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11. Conditions. This Commitment and closing of the Grant shall be subject to the provisions of the Guidelines, the Regulations, the Statute and to the following conditions:
 - a. All leases, if any, shall be in form and substance satisfactory to the Authority.
 - b. A satisfactory appraisal of the Project (in accordance with the Authority's appraisal guidelines, to be ordered by the Grantee at Grantee's expense).
 - c. Evidence satisfactory to the Authority that the Project is and will be in compliance with applicable zoning, planning, building and land use laws and regulations.
 - d. Evidence satisfactory to the Authority that the Grantee and the Project are and will be in compliance with applicable environmental laws, regulations, permits, orders or other environmental requirements and that the real and personal property, if any, comprising the Project do not contain hazardous wastes or other adverse environmental conditions. Such evidence shall include a Phase 1 ordered by the Grantee to assist the Authority in making a determination of environmental risks in connection with this Project. The Phase 1 will combine information compiled internally by the Authority and information obtained from Grantee and other independent sources.
 - e. All representations made by or on behalf of Grantee to the Authority in connection with its application for the Grant and in connection with the closing shall be true and correct as of the date of funding of the Grant.
 - f. As of the date of funding of the Grant, no change shall have occurred in the financial condition of the Grantee or in any other aspect of the financing proposal of which the Grant is a part which, in the judgment of the Authority, materially adversely affects the ability of the Grantee to repay the Grant in the event of a default or makes unreasonable or unreliable any of the financing assumptions upon which such repayment is predicated.
 - g. No litigation shall be pending or threatened calling into question or which, if adversely determined, would affect (i) the creation, organization or existence of the Grantee; (ii) the validity of the Grant documents; or (iii) the authority of the Grantee to enter into the Restrictive Covenant against the Project's real property or to otherwise make or perform the Grant documents. No proceedings shall be pending or threatened against or affecting the Grantee which involve the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of the Grantee, nor shall the Grantee be in default with respect to any order of any court, governmental authority or arbitration board or tribunal or any prior grant or loan made to it by the Authority.

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- h. Such other conditions as the Authority may deem necessary or prudent to assure repayment of the Grant or compliance with the Statute, the Regulations or the Guidelines.

12. Grantee Representations, Warranties and Covenants. This Commitment is issued on the basis of certain information and materials provided to the Authority by Grantee, including, without limitation, the Grant application, financial information, all representations, information, exhibits, data and other materials. Any intentional misinformation or withholding of material information incident thereto shall, at the option of the Authority and without limitation to any other right or remedy of the Authority, void all of the Authority's obligations hereunder. Furthermore, Grantee represents, warrants and covenants that:

- a. Grantee is a local or tribal government located in Colorado and has the necessary power, authority and licenses to operate its properties and transact business including in Colorado.
- b. Grantee has the full power and authority to accept the Grant and to undertake the other obligations as contemplated by this Commitment, to execute and deliver the Grant Documents, and to perform Grantee's obligations under this Commitment and the Grant Documents. The execution and delivery of the Grant Documents will be duly authorized by all necessary action on the part of Grantee, its officers, and/or directors, as applicable, and the Grant Documents will be valid, binding and enforceable obligations of Grantee.
- c. There is no action, suit or proceeding at law or in equity, or by or before any governmental instrumentality or agency, or to the knowledge of Grantee, threatened against or affecting it, which, if adversely determined, would materially impair its right or ability to carry on business substantially as now conducted, or as contemplated to be conducted under this Commitment, or that would materially adversely affect Grantee's financial condition.
- d. To the best of Grantee's current knowledge, the transactions contemplated herein will not cause a default under any other agreement and will not conflict with or violate any organizational document or agreement to which Grantee is a party or by which Grantee is bound.
- e. To the best of Grantee's current knowledge, Grantee has not executed and will not execute any agreements with provisions contradictory or in opposition to, the provisions of this Commitment.
- f. All information given to the Authority is accurate and Grantee has not omitted any material facts.

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- g. Grantee will comply with the provisions of any federal, state, or local law prohibiting discrimination on the grounds of race, color, religion or creed, sex, marital status, national origin, familial status or disability, sexual or gender preference, political opinion or affiliation, in all Grantee operations and shall provide prompt written notice to the Authority of the filing of any complaints of discrimination with respect to any Grantee operations.
 - h. Grantee will certify that the Project is located in a jurisdiction that has filed a commitment to increase affordable housing and opted into Proposition 123 funding. Failure of the Project to be in a committed area that has opted into Proposition 123 will be considered an immediate event of default. In addition to a certification, the Authority may require, in the Authority's sole discretion, an attorney opinion that the Project is located in jurisdiction that has opted into Proposition 123 funding.
13. Assignment. This Commitment shall not be assignable or transferable without the prior written consent of the Authority.
 14. Reliance by Grantee and Third Parties. This Commitment is not intended to benefit any person or entity other than the Grantee and no other person or entity may rely on the terms hereof. Further, the Grantee acknowledges and agrees that (a) any report, inspection, review, acceptance or other due diligence activity regarding the Project, Grantee or other matters performed by or at the direction of the Authority, its legal counsel or consultants shall be solely for the purpose of satisfying the Authority's investment criteria and may not be relied on by the Grantee or any other party in making decisions regarding the Project or for any other reason; and (b) the Authority, its legal counsel and consultants shall have no responsibility or liability for the sufficiency, accuracy completeness of the items or information so inspected, reviewed or accepted or for the environmental condition or structural soundness of the Project.
 15. Advice to Seek Legal Counsel. The Authority has advised the Grantee to obtain legal counsel in connection with the Grant.
 16. Governing Law. This Commitment and all matters of performance relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of Colorado. All suits or actions related to this Commitment shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.
 17. Time is of the Essence. Time is of the essence hereof. Grantee shall provide requested documentation and information in a timely manner. To the extent that documentation and information is not provided by the Grantee in a timely manner, the Authority is not obligated to extend the initial term of the Commitment if Closing has not occurred.

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18. Modification. Modification or amendment of this Commitment is effective only if made in writing and signed by the parties hereto.
19. Publications. Grantee hereby authorizes OEDIT and the Authority to use information regarding or relating to the Project to publicize and/or report on their financing activities in any manner of communication or media including, but not limited to, in press releases, websites, social media, flyers, advertisements, community reports, etc. without further authorization or the consent of the Grantee, *provided* that confidential or other proprietary information is not shared. Grantee agrees to obtain prior written approval from OEDIT and the Authority before using the name or logo of OEDIT or the Authority in any press release, media events, website, social media or any other public communication.
20. Counterparts. This Commitment may be executed in counterpart and all signatures when taken together shall constitute one and the same instrument.
21. Entire Agreement. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior or contemporaneous understandings, oral representations or agreements among the parties with respect to the subject matter hereof, including that certain Grant Commitment dated March 18, 2024, and that certain Amended and Restated Grant Commitment dated July 24, 2024, are superseded by this Agreement.
22. Electronic Signatures. The electronic signatures of the parties included in this Commitment, in any form, are intended to authenticate this writing, bind the parties hereto, and to otherwise have the same force and effect as manual signatures. Delivery of a copy of this Commitment bearing an original or electronic signature by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original form of the document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.
23. Effectiveness of Commitment. This Commitment shall not become effective unless a duplicate copy hereof is returned to the Authority within ten (10) business days of the date hereof with acceptance endorsed on said copy by the signature of an authorized representative of the Grantee.

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COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado, solely in its capacity as the Program Administrator for the AFFORDABLE HOUSING FINANCING FUND, managed by the Colorado Office of Economic Development and International Trade, a Colorado state agency

DocuSigned by:

By: _____
648C2D63B62C4BA
Steve Boice, Manager of Business Finance
Colorado Housing and Finance Authority

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ACCEPTED:

TOWN OF FRISCO, COLORADO

By: _____
Frederick J. Ihnken, Mayor

Date: _____

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EXHIBIT A

- A. **PRE-CLOSING DOCUMENTS.** The Grantee must provide the following Pre-Closing Documents to the Authority:
1. Copies of the Grantee's formation documents and governance documents; Grantee's signature block; and a Grantee's Resolution. The Grantee's Resolution shall be certified as true and correct by the corporate secretary or other authorized representative if a meeting was held or shall be executed by all of the directors, commissioners, council members or other authorized representatives if no meeting was held and shall designate the name and title of persons authorized to sign the Closing Documents. Grantee shall provide a current list of all of Grantee's authorized representatives.
 2. UCC Search, lien searches, and other Grantee entity searches, as applicable. (To be ordered by the Authority.)
 3. Phase I Environmental Report (to be ordered by Grantee).
 4. Real Estate Tax Certificate evidencing no unpaid taxes due for the real property and all taxes due paid at Closing.
 5. Executed copies of all leases affecting the Project, if any, which shall be in form and substance satisfactory to the Authority. If the Project is subject to a ground lease, additional requirements shall be provided.
 6. A current commitment for an owner's policy of title insurance from a title company acceptable to the Authority. The title commitment shall obligate the title company to issue a 2006 form ALTA Owner's Policy. The exception for taxes shall be limited to taxes for the year of closing and future years. The title company shall provide to the Authority copies of all of the documents listed on Schedule B-2 as exceptions to title.
 7. Copy of purchase and sale agreement for the Project.
 8. Appraisal.
- B. **CLOSING DOCUMENTS.** The Authority will provide the following Closing Documents to the Grantee for review prior to closing and for execution, attestation, sealing and notarization, as appropriate, at closing:
1. Settlement Statement
 2. Grant Agreement

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3. Restrictive Covenant (recorded in a priority lien position)
4. Certification Regarding Environmental Conditions
5. Grantee's Resolution
6. Grantee's Closing Certificate
7. Subordination Agreement for any existing covenants or payment liens
8. Other documents at the discretion of the Authority.

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EXHIBIT B

Program Reporting Requirements

Quarterly Reports are due the end of the first month after the end of each quarter, with the first report due on or before _____.

The quarterly report will include:

1. Project Level Details for each funding award:
 - a. Grantee/Recipient Name
 - b. The following Property Information, to the extent applicable:
 - i. Project Name (At the time of application & upon completion, if changed)
 - ii. Project Street Address
 - iii. City and county location
 - iv. Housing type (homeownership and/or rental)
 - v. Unit count and bedroom count for deed-restricted units. Unit count will be used to determine anticipated or actual households served.
 - vi. Unit count and bedroom count for market-rate units.
 - vii. Proposed units in each AMI Level and average AMI of the project.
Land Banking projects - indicate the proposed percentage of mixed-use.
 - viii. Mixed-use properties provide a category of non-residential uses.
 - ix. Environmental Sustainability Certification
 - x. Electrification Level
 - xi. Meets the transit-oriented development (TOD) definition. *[Definition to be provided by OEDIT.]*
 - xii. Meets the walkable neighborhood definition. *[Definition to be provided by OEDIT.]*

2. Additional Project Details:

Confirm the following statutory priorities are satisfied by the project: high density, mixed-income, and environmentally sustainable.

- high-density-informed by local density definitions and maximum allowable density based on local conditions
- mixed-income-commitment to serving a broad range of income levels within the development (70% of units must be affordable housing)
- environmental sustainability-environmental sustainability standard met

3. Project Status Details:

Confirm status of Project development and construction and inform the Authority of any update to number of planned affordable units. Once available, submit copy of complete development plan.