

ASSIGNMENT AND SUBORDINATION OF ARCHITECT'S CONTRACT

This **ASSIGNMENT AND SUBORDINATION OF ARCHITECT'S CONTRACT** (this "**Assignment**") is made as of [DATE], 2025 ("**Effective Date**"), by **NHPF GALENA, LLC**, a Colorado limited liability company (the "**Borrower**"), in favor of **TOWN OF FRISCO**, a Colorado home rule municipal corporation (the "**Lender**").

RECITALS

A. Borrower has or will have, concurrently with the Effective Date (as defined in the Loan Agreement), a leasehold interest in that certain real property pursuant to the Ground Lease between Borrower and Lender dated [of even date herewith] (the "Ground Lease") and improvements located in Summit County, Colorado, legally described on **Exhibit A** attached hereto and incorporated herein (the "**Land**") and intends to acquire and construct a 54-unit affordable housing apartment project located thereon (the "**Project**").

B. Lender is making a loan to Borrower in the original principal amount of Eight Million One Hundred Thousand and no/100 Dollars (\$8,100,000.00, the "**Loan**").

C. Borrower's obligations to repay the Loan is evidenced by a Promissory Note in the maximum principal amount of \$8,100,000 (the "**Note**"). In connection therewith, Borrower and Lender have entered into a Loan Agreement, dated as of the Effective Date (as the same from time to time may be amended, modified, extended, renewed or restated, the "**Loan Agreement**").

D. In connection with the Project, Borrower has (i) caused those certain plans, drawings, and specifications and (and all amendments, modifications, supplements, general conditions and addenda thereto) (the "**Plans**") to be prepared by or under the supervision or direction of [INSERT ARCHITECT] (the "**Architect**"), and (ii) entered into that certain AIA Document B101-2017 dated as of [DATE] (the "**Contract**"), providing for the preparation of the Plans and supervision of the Project, a true, correct and complete copy of which is attached hereto as **Exhibit B**.

E. As a condition to entering into the Loan Agreement and making the Loan to Borrower, the Lender has required the execution and delivery of this Assignment by Borrower, assigning the Plans and Contract to Lender, and the acknowledgment hereof and consent hereto by the Architect.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Borrower does hereby grant, assign, transfer and set over unto the Lender all of its right, title and interest in and to the Plans and the Contract, and all amendments, modifications, supplements, general conditions and addenda thereto. The Borrower further agrees as follows:

1. **Definitions.** All capitalized but undefined terms in this Assignment shall have the meaning assigned to them in the Loan Agreement unless the context clearly indicates otherwise.

2. **No Liability.** The Lender does not assume any of the obligations or duties of the Borrower under or with respect to the Contract unless and until the Lender shall have given the Architect written notice that it has elected to do so following the occurrence of an Event of Default under the Loan Agreement. In the event that Lender does not give the Architect such notice, the Lender shall have no liability whatsoever for the performance of any of such obligations or duties of the Borrower. For the purpose of completing the Improvements, the Lender may, in its absolute discretion, reassign its right, title,

and interest in the Contract, upon notice to and consent of the Architect, which consent shall not be unreasonably withheld, conditioned or delayed, but without any requirement for Borrower's consent.

3. **Representations and Warranties.** The Borrower represents and warrants that there has been no prior assignment of the Plans or the Contract, that the Contract is a valid and enforceable agreement, and that neither party is in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not due to be performed until after the date hereof. The Borrower agrees not to amend or modify the Contract without prior written consent of Lender. The Borrower agrees not to assign, sell, pledge, mortgage, or otherwise transfer or encumber its interest in the Contract without the prior written consent of the Architect and Lender so long as this Assignment is in effect.

4. **Attorney-In-Fact.** The Borrower hereby irrevocably appoints the Lender as its attorney-in-fact (which appointment is coupled with an interest and is irrevocable) to demand, receive and enforce the Borrower's rights with respect to the Contract and the Plans, to make payments under the Contract and to give appropriate receipts, releases and satisfactions for and on behalf of and in the name of the Borrower or, at the option of the Lender in the name of the Lender, with the same force and effect as the Borrower could do if this Assignment had not been made.

5. **Collateral Assignment.** This Assignment shall constitute a perfected, absolute and present assignment provided that the Lender shall have no right under this Assignment to enforce the provisions of the Contract or to exercise its right as attorney-in-fact for the Borrower or any other remedies under this Assignment until an Event of Default shall have occurred under the Loan Agreement or other Loan Documents. Upon the occurrence of any such Event of Default, the Lender may, without affecting any of its rights or remedies against the Borrower under any other instrument, document or agreement, exercise its rights under this Assignment as Borrower's attorney-in-fact in any manner permitted by law, and in addition, the Lender shall have the right to exercise and enforce any or all rights and remedies available after default to a secured party under the Uniform Commercial Code, as adopted in the State of Colorado. If notice to the Borrower of any intended disposition of the collateral or of any intended action is required by law in any particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to the date of intended disposition or other action.

6. **Termination.** Upon the indefeasible payment and performance of all of the obligations of Borrower under the Loan Documents (as defined in the Loan Agreement) and the satisfaction of all additional reasonable and documented out-of-pocket costs and expenses of Lender as provided herein, and upon the indefeasible payment and performance of all obligations under or pursuant to the Loan Documents, this Assignment shall terminate.

7. **Costs.** The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees) which the Lender may incur in exercising any of its rights under this Assignment.

8. **Successors and Assigns.** Subject to the aforesaid limitation on further assignment by Borrower, this Assignment shall be binding upon the Borrower, its successors and assigns, and shall inure to the benefit of the Lender, its successors and assigns.

9. **No Waiver.** This Assignment may be waived, modified, amended, terminated, or discharged only explicitly in a writing signed by the Lender. A waiver signed by the Lender shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender's rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and shall be exercised singularly or concurrently, at

Lender's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

10. **Severability.** Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be held to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Assignment.

11. **Waiver of Jury Trial.** Borrower hereby agrees that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by any party to this Assignment or any successor or assign of any party on or with respect to this Assignment or which in any way relates, directly or indirectly, to this Assignment or any event, transaction, or occurrence arising out of or in any way connected with this Assignment, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING. Borrower acknowledges and agrees that this Section is a specific and material aspect of this Assignment, and that Lender would not agree to accept this Assignment as a basis for the extension of credit to Borrower if this waiver of jury trial Section were not a part of this Assignment.

12. **Governing Law.** This Assignment shall be governed by, and construed and enforced in accordance with, the laws of the State of Colorado, without giving effect to its conflicts of laws principles or rules.

13. **Consent to Jurisdiction and Venue.** BORROWER AND ARCHITECT AGREE THAT ANY CONTROVERSY ARISING UNDER OR IN RELATION TO THIS ASSIGNMENT SHALL BE LITIGATED EXCLUSIVELY IN COLORADO. THE STATE AND FEDERAL COURTS AND AUTHORITIES SITTING IN THE COUNTY OF SUMMIT, COLORADO, SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL CONTROVERSIES WHICH SHALL ARISE UNDER OR IN RELATION TO THIS ASSIGNMENT; AND BORROWER AND ARCHITECT CONSENT TO THE JURISDICTION AND VENUE OF ANY SUCH COURT AND WAIVE ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT PROPER OR CONVENIENT. IN THE EVENT BORROWER OR ARCHITECT COMMENCE ANY ACTION IN ANOTHER JURISDICTION OR VENUE UNDER ANY TORT OR CONTRACT THEORY ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS ASSIGNMENT, LENDER, AT ITS OPTION, SHALL BE ENTITLED TO HAVE THE CASE TRANSFERRED TO THE JURISDICTION AND VENUE ABOVE-DESCRIBED, OR IF SUCH TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, TO HAVE SUCH CASE DISMISSED WITHOUT PREJUDICE, BUT ANY APPLICABLE STATUTE OF LIMITATIONS SHALL CONTINUE TO BE TOLLED FOR A PERIOD OF SIX (6) MONTHS AFTER SUCH DISMISSAL.

14. **Notices.** All notices to be given by Lender to Architect shall be given to Borrower, at the address and in the same manner as notices to Borrower pursuant to the notice provisions contained in the Loan Agreement. All other notices given under this Assignment shall be in writing and shall be sent to the respective addresses of the parties, in the manner set forth in the Loan Agreement.

15. **Further Assurances.** Borrower, upon request of Lender, shall execute and deliver such additional documents and do such other acts as may be reasonably necessary to fully implement the intent of this Assignment and to perfect and preserve the rights and interests of Lender hereunder and the priority thereof.

16. **Counterparts.** This Assignment and the Architect's Acknowledgment and Consent attached hereto may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same document. To facilitate execution of this Assignment, the parties may execute and exchange counterparts of the signature pages by electronic mail. If transmitted by electronic mail, then this Assignment will be treated in all manners and respects as an original document, and the signature of any party thereon will be considered an original signature. Any document transmitted by electronic mail will be considered to have the same binding legal effect as an original of such document. At the request of either party hereto, a document transmitted by electronic mail will be re-executed by the parties in the original form thereof. A copy of this Assignment or any other writing required under this Assignment that is executed by electronic signature in compliance with the laws of the State of Colorado will be deemed as binding upon the maker as any signature or mark made by ink or otherwise.

[SIGNATURE PAGE FOLLOWS]

The Borrower executed this Assignment and Subordination of Architect's Contract as of the day and year first above written.

BORROWER:

NHPF GALENA, LLC,
a Colorado limited liability company

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

By: _____
Name: Neal Drobenare
Its: Senior Vice President

[Signature Page to Assignment and Subordination of Architect's Contract]

ARCHITECT'S ACKNOWLEDGMENT AND CONSENT

In consideration of the Lender making of the Loan to the Borrower described in the foregoing Assignment, the undersigned architect (the "**Architect**") hereby consents to the above Assignment and acknowledges and agrees with the Lender as follows:

1. The Architect has prepared the Plans and has entered into the Contract with the Borrower, a true and correct copy of which is attached as **Exhibit B ("Contract")**, pursuant to which the Architect has agreed to act as architect in connection with the construction of the Improvements.

2. The Plans have not been modified or, except for the above Assignment, assigned, and the Contract is in full force and effect, and no event has occurred or failed to occur as of the date hereof that but for the passage of time or the giving of notice or both would be a default thereunder.

3. Upon the occurrence of an Event of Default under the Loan Agreement, and upon Architect being paid in full for all services provided to Borrower, the Lender shall have the right, at its option upon written notice to the Architect, to exercise its right to complete or cause the completion of the Improvements in accordance with Section 2 of the Assignment and, in connection therewith, to use the Plans and ideas, designs, and concepts therein' contained in connection with the completion of the Improvements without payment of any additional fees or charges to the Architect and the Architect shall, at the Lender's request, continue performance on Lender's behalf under the Contract in accordance with the terms thereof, provided that the Architect is compensated in accordance with the Contract.

4. That the Architect has been paid in full for all labor performed at, or materials supplied to, the Project to and including the date hereof. Architect has received \$[INSERT] of the total Contract amount of \$[INSERT] as payment in full for all labor performed at or in connection with the Project to and including the date hereof. The sum of \$[INSERT] remains to be paid for services to be performed after the date hereof. With respect to all labor performed at or in connection with the Project for which payment in full has been received as set forth above, Architect hereby fully and absolutely waives any and all rights to claim any lien whatsoever against the Project, including, without limitation, any rights to claim any mechanics' or materialmen's liens.

5. Payment of any amounts due to Architect under the Contract (the "**Architect's Fee**") shall be subordinate to the payment of all principal, interest and other amounts payable to Lender under the Loan Agreement and the Note. In addition, any lien that Architect may now be entitled to or hereafter acquire as a result of non-payment of its portion of the Architect's Fee shall be subordinate to the lien of any mortgage or deed of trust from Borrower in favor of Lender and any other documents or agreements securing the Loan Agreement or the Note.

6. All change orders shall be subject to Lender's prior written approval if the Change Order (i) would change the number of Units within the Project as shown on the Plans; (ii) would significantly or adversely affect any structural component of the Project, (iii) involves an increase in a Budget line item that exceeds \$50,000 or any increase in one or more Budget line items that exceed \$200,000 in the aggregate, or in such cases when the aggregate of the proposed change orders (PCO's) for a single Change Order is less than \$50,000 but includes the cost of individual PCO's which exceed \$50,000, or involves an aggregate of multiple changes that are combined into a single change order where the net of all changes included would result in the net amount of the change order to be below the \$200,000 aggregate threshold stated above, or (iv) would delay the Substantial Completion Date of the Project beyond the Substantial Completion Date (each change requiring Lender's approval under this subparagraph being referred to herein as a "**Material Change Order**"). Notwithstanding the foregoing, the Lender shall not unreasonably withhold

approval of changes as described in the Loan Agreement. The Lender shall notify the Borrower and Architect whether it approves or rejects a proposed Material Change Order within three (3) business days of when the Material Change Order is submitted to the Lender for approval by signing the Material Change Order if it approves.

7. Except as provided herein, the disbursement provisions contained in the Loan Agreement shall control the disbursement of loan funds and payments to the Architect notwithstanding any conflicting provisions contained in the Contract. Notwithstanding the foregoing, (A) if the Lender shall elect to assume the Borrower's obligations under the Contract, the payments to the Architect shall be controlled by the terms of the Contract, and (B) in all cases the date of payment due and payable to Architect shall be controlled by the terms of the Contract.

8. Upon written notice by the Lender to the Architect, the Lender may enforce the obligations of the Contract with the same force and effect as if enforced by the Borrower; and provided Lender performs the obligations of the Borrower; and the Architect will accept such performance in lieu of performance by the Borrower and in satisfaction in full of the Borrower's obligations thereunder.

9. Architect will give the Lender prompt written notice of any default by the Borrower under the Contract.

10. Architect agrees not to terminate the Contract or exercise any other remedy under the Contract by reason of any defaults by the Borrower unless such default shall have continued for a period of thirty (30) days after written notice of such default is given to the Lender by the Architect and Lender has had the opportunity to cure such default, provided, however, that if any such default is not reasonably susceptible to cure within such thirty (30) day period, provided that Lender commences a cure within such thirty (30) day period and diligently pursues the same to completion, Lender shall have such additional time as Lender may reasonably require to cure any such default, not to exceed sixty (60) days. Furthermore, in the event the Contract is terminated or the Architect has exercised any remedy under the Contract by reason of a default by the Borrower, the Architect agrees to reinstate the Contract and recommence services under the Contract, so long as the Lender cures any default and assumes the obligations of the Borrower thereunder within a reasonable time. Nothing herein shall require the Lender to cure any default of the Borrower under the Contract.

11. The undersigned hereby represents that, to the best of Architect's knowledge, the Plans are in compliance with all applicable building laws, ordinances, rules and regulations affecting the Improvements and the real estate on which it is situated. Upon completion of the Improvements in accordance with the Plans, the Architect will represent to the Lender and to any assignee of the Loan made by the Lender, that the Improvements have been completed in accordance with the Plans and all such building laws, ordinances, rules and regulations.

12. The officer signing this consent on behalf of the Architect hereby represents that the Architect has full authority under all state and local laws and regulations to perform all of its obligations under the Contract in accordance with the terms thereof and that the Architect will comply with all applicable laws and regulations, local, state and federal, in performing such obligations.

13. This Acknowledgment and Consent shall be binding upon and shall inure to the benefit of the Architect and the Lender, and their successors and assigns.

14. A facsimile or photocopy signature on this Acknowledgment and Consent, any amendment hereto or any notice delivered hereunder shall have the same legal effect as an original signature.

Dated: [DATE], 2025

[SIGNATURE PAGE FOLLOWS]

ARCHITECT:

[INSERT ARCHITECT]

By: _____

Name: _____

Its: _____

[Signature page to Architect's Acknowledgment and Consent]

**EXHIBIT A
TO THE
ASSIGNMENT AND SUBORDINATION OF ARCHITECT'S CONTRACT**

Legal Description of Land

The leasehold interest in that certain property described as follows:

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

Addressed as 602 Galena Street, Frisco, CO, 80443

**EXHIBIT B
TO THE
ASSIGNMENT AND SUBORDINATION OF ARCHITECT'S CONTRACT**

Architect's Agreement

[Attached]

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