

ASSIGNMENT AND SUBORDINATION OF CONSTRUCTION CONTRACT

This **ASSIGNMENT AND SUBORDINATION OF CONSTRUCTION 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. Borrower and [INSERT CONTRACTOR] (the “**Contractor**”) have entered into that certain AIA Document A102 – 2017 Standard Form of Agreement Between Owner and Contractor, dated as of [DATE] (together with all exhibits and addenda thereto, the “**Contract**”) pursuant to which Contractor has agreed to construct the Improvements (as that term is defined in the Loan Agreement) according to the drawings, plans and specifications described in the Contract (the “**Plans and Specifications**”). A true, correct and complete copy of the Contract is attached hereto as **Exhibit B**.

E. As a condition to the making of the Loan to Borrower, Lender has required the execution of this Assignment by Borrower and the acknowledgment and consent of this Assignment by the Contractor.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, Borrower does hereby grant, assign, transfer and set over unto Lender all of its right, title and interest in and to the Contract for construction of the Improvements. 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 Borrower under or with respect to the Contract unless and until Lender shall have given the Contractor 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 Contractor such notice, Lender shall have no liability whatsoever for the performance of any of such obligations and duties. For the purpose of completing the Improvements, Lender may, in its absolute discretion, reassign its right, title and interest in the Contract upon notice to and consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed but without any requirement for Borrower’s consent.

3. **Representations and Warranties.** Borrower represents and warrants that there have been no prior assignments of the Contract, that the Contract is a valid, enforceable agreement; 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. Borrower agrees that no material (as such term is defined on the Contractor's Acknowledgement and Consent) change in the terms thereof shall be valid unless agreed to by Lender as provided in the attached Contractor's Acknowledgement and Consent. 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 Contractor and Lender so long as this Assignment is in effect.

4. **Attorney-In-Fact.** Borrower hereby irrevocably appoints Lender as its attorney-in-fact (which appointment is coupled with an interest and is irrevocable) to demand, receive, and enforce Borrower's rights with respect to the Contract, to make payments under the Contract and give appropriate receipts, releases and satisfactions for and on behalf of and in the name of Borrower or, at the option of Lender, in the name of Lender, with the same force and effect as 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 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 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, Lender may, without affecting any of its rights or remedies against 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 Borrower of any intended disposition of the collateral or any other intended action is required by law in a 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.** Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees) which 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 Borrower and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

9. **No Waiver.** This Assignment may be waived, modified, amended, terminated or discharged only explicitly in a writing signed by Lender. A waiver signed by 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 Lender's rights or remedies hereunder. All rights and remedies of 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 Contractor 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 Contractor'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]

Borrower has executed this Assignment 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 Construction Contract]

CONTRACTOR'S ACKNOWLEDGMENT AND CONSENT

In consideration of Lender's making the Loan to Borrower described in the foregoing Assignment, the undersigned Contractor hereby consents to the above Assignment and acknowledges and agrees with Lender as follows:

1. The Contractor has entered into the Contract with Borrower whereby the Contractor has agreed to act as general contractor in connection with the construction of the Improvements. A true, correct and complete copy of the Contract is attached hereto as **Exhibit B**.

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

3. Contractor acknowledges that it has been provided with a copy of the Loan Agreement. Contractor further acknowledges that the Lender is a third party beneficiary of the Loan Documents (as defined in the Loan Agreement) for the purpose of issuing correction orders pursuant to Section 4 hereof and has made the Loan under the Loan Agreement for which the Project is the primary source of collateral. Upon the occurrence of an Event of Default under the Loan Agreement, the Contractor shall, at Lender's written request, continue performance on Lender's behalf under the Contract in accordance with the terms thereof, provided that the Contractor shall be compensated in accordance with the Contract for all work, labor, services and materials.

4. All Change Orders:

(a) shall be in writing on a form approved by Lender, numbered in sequence, signed by Borrower and Contractor and any other entity required pursuant to the Construction Contract and, with regard to Material Change Orders, submitted to Lender by the Borrower prior to the proposed effectiveness thereof and accompanied by working drawings and a written narrative of the nature of and reason for the nature of and reason for the proposed change;

(b) shall contain an estimate by Borrower of all increases and decreases in itemized Project Costs that would be caused by the change, as well as the aggregate amount of all changes in estimated Project Costs (both increases and decreases) previously made;

(c) shall contain a certification by Borrower stating the aggregate amount, including both increases and decreases, of all changes in Project Costs reflected in Change Orders to date;

(d) shall indicate any additional days requested and include a description of the impact of the proposed Change Order on the construction schedule; and

(e) 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 \$100,000 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 \$100,000, 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 (e) being referred to herein as a "**Material Change**

Order”). Notwithstanding the forgoing, the Lender shall not unreasonably withhold approval of changes as described in the Loan Agreement. The Lender shall notify the Borrower and Contractor whether it approves or rejects a proposed Material Change Order within three (3) business days of the date the Material Change Order is submitted to the Lender for approval and shall sign the Material Change Order if it is approved.

5. When, at any time during the construction of the Project, in the reasonable opinion of the Lender reached in consultation with Borrower, Contractor has failed to perform Contractor’s obligations in accordance with the Contract, the Lender may issue a correction order to Borrower for the correction of such conditions, and Borrower will in-turn issue a correction order to Contractor. The Contractor shall promptly correct such work and perform such obligations in accordance with the Contract. Neither the Contract Sum nor date of Substantial Completion shall be changed as a result of correction orders requested by the Lender.

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

7. The Lender and its authorized agents shall have the right of entry and reasonable access during normal business hours to the Project site to inspect all completed work and shall have the right to inspect any other location or locations where materials, equipment, or fixtures intended for use in connection with the work may be stored pending such use including, but not limited to, materials, equipment, fixtures furnished, pre-fabricated materials, etc. installed or stored in and about the Project, provided (1) that the Lender and its authorized agents are accompanied by Contractor’s personnel to ensure safety and site or location guidance and (2) the Lender and its authorized agents comply with Contractor’s safety program and procedures when on site. Contractor shall furnish such temporary facilities as is customarily furnished to inspecting architects and shall make available the Contract, Plans and Specifications, and any other documents reasonably required by Lender at the Project site.

8. Contractor agrees to indemnify, defend and save harmless the Lender, its directors, officers and employees, against loss or expense by reason of the liability imposed by law upon Contractor or the Lender for damages provided that such loss, expense, liability or damage is attributable to bodily injuries, including death at any time resulting therefrom, accidentally sustained by any person or persons or on account of damage to property arising out of or in consequence of the performance or nonperformance of the Work as required by the Contract Documents, but only to the extent such injuries to persons or damage to property are caused by the negligence or willful misconduct of Contractor, its subcontractors, employees, agents, or any other person for whose acts they may be liable.

9. During the performance of the Contract Documents:

(a) Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, age, disability, sexual orientation, or familial status. Contractor will take affirmative action, consistent with applicable law, to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, age, disability, sexual orientation, or familial status. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for

training, including apprenticeship and on-the-job training. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State of Colorado and/or other appropriate bodies setting forth the provisions of this non-discrimination clause.

(b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, age, disability, sexual orientation, or familial status.

10. The disbursement provisions contained in the Loan Agreement shall control the disbursement of proceeds of the Loan to Borrower. Contractor's application for payment under the Construction Contract shall be on the form required under the Loan Agreement, together with forms required by the Contract. With each application for payment, Contractor shall furnish conditional lien releases for every subcontractor, laborer or materialmen having direct contracts with Contractor in connection with the work in accordance with the Contract, and the amounts due or to become due to such subcontractors, laborers, or materialmen for work done and materials furnished as of the date of the current application for payment, and, if requested by Borrower or the Lender, certifying that all subcontractors, laborers and materialmen having direct contracts with Contractor have been paid to the date covered by the previous application for payment. With respect to each application for payment on the Project, prior to receipt of payment from the previous application for payment (other than the first application for payment), Borrower or the Lender may require Contractor to provide acknowledgements of payment and unconditional waivers of lien to the date covered by the last payment received by Contractor from all subcontractors and materialmen having direct contracts with Contractor for work performed by such subcontractors and materialmen. Concurrently with the final application for payment, Contractor shall submit an affidavit listing all subcontractors and materialmen having direct contracts with Contractor and certifying that there are no liens, claims or demands by such subcontractors and materialmen, laborers, other employees or third persons. Contractor also shall furnish waivers or releases of liens conditioned only upon the actual receipt of payment therefor, from itself and all subcontractors and materialmen having direct contracts with Contractor for all Work performed and materials furnished hereunder.

11. Contractor shall, upon the completion of the construction work to be performed under the Contract to the Lender's commercially reasonable satisfaction, execute and deliver such certification of substantial completion as Borrower is required to execute and deliver under the Loan Agreement, or any other form acceptable to the Lender in its sole discretion.

12. If (i) Contractor, or any officer or director of Contractor, or any stockholder holding 10% or more of the voting stock of Contractor, or any person having directly or indirectly an interest of 10% or more in Contractor, is also a subcontractor or materialman, or an officer or director of a subcontractor or materialman, or stockholder holding 10% or more of the voting stock of the subcontractor or materialman, or has a direct or indirect interest of 10% or more in the subcontractor or materialman; or (ii) Borrower, or any partner, officer or director of Borrower, or any stockholder holding 10% or more of the voting stock of Borrower, or any person having directly or indirectly an interest of 10% or more in Borrower, is also a subcontractor or material supplier, or an officer or director of a subcontractor or materialman, or stockholder holding 10% or more of the voting stock of the subcontractor or materialman, or has a direct or indirect interest of 10% or more in the subcontractor or materialman, then Contractor and Borrower, as applicable, shall disclose in writing to the Lender the identity of such subcontractor or materialman prior to the performance of any Work or furnishing of any material by such subcontractor or materialman. In addition, in the event of such identity of interest, Contractor shall demonstrate to the commercially reasonable satisfaction of the Lender, prior to the performance of said Work and furnishing of said materials, that the amount proposed to be charged for said Work or materials is competitive, fair and reasonable, in accordance with the criteria and standards established by the Lender. If Contractor fails to disclose an identity of

interest and/or obtain prior approval of the price for such sublet Work or materials, Contractor hereby consents to accept payment for such Work or material at an amount determined in the Lender's sole discretion.

13. In addition to and not by way of limitation of any other warranties existing by law or statute or otherwise provided in the Contract or Loan Documents, Contractor hereby agrees to promptly correct any defects due to faulty materials, workmanship or otherwise not in accordance with the requirements of the contract documents due to an act or omission of the Contractor or anyone under Contractor's control and that exist within 1 year from the date of Substantial Completion, at no expense to Borrower.

14. If Lender shall ever elect to assume Borrower's obligations under the Contract, Lender may enforce the obligations of the Contract with the same force and effect as if enforced by Borrower; provided Lender performs the obligations of Borrower, and the Contractor will accept such performance in lieu of performance by Borrower in satisfaction of Borrower's obligations thereunder.

15. The Contractor will give Lender prompt written notice of any default by Borrower under the Contract.

16. The Contractor will not terminate the Contract on account of any default of Borrower thereunder without providing written notice of such default to Lender and providing Lender thirty (30) days to cure the default or to commence completion of construction of the Improvements, 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. The Contractor may, however, stop work on the Improvements pursuant to the terms of the Contract or complete the Improvements, provided the Contractor notifies Lender of the work stoppage and takes commercially reasonable steps to assure that the Improvements are secure and will not sustain material damage as a result of the work stoppage. In the event Lender so elects to complete the Improvements, the Contractor agrees not to terminate said Contract so long as the defaults of Borrower thereunder are cured by Lender within a reasonable time, not to exceed thirty (30) calendar days, 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. However, nothing herein shall require Lender to cure any default of Borrower under the Contract, unless and until Lender elects to assume Borrower's obligations under the Contract as provided herein.

17. That the Contractor and all subcontractors, laborers and materialmen have been paid in full for all labor performed at, or materials supplied to, the Project to and including the date hereof. Contractor has received \$[] of the total Contract amount of \$[] as payment in full for all labor performed at, and materials supplied to, the Project to and including the date hereof. The sum of \$[] remains to be paid for services to be performed and materials to be provided after the date hereof. With respect to all labor and materials supplied to the Project for which payment in full has been received as set forth above, Contractor 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.

18. Contractor hereby certifies that the Contractor has full authority under all state and local laws and regulations to perform all of its obligations under the Contract with Borrower in accordance with the terms thereof, and that the Contractor will comply with all applicable local, state and federal laws, rules and regulations in all material respects in performing such obligations. Upon completion of the

Improvements, the Contractor will certify to Lender, and to any assignee of the Loan made by Lender under the Loan Agreement, that the Improvements have been completed in accordance in all material respects with the Contract, the Plans and Specifications and all applicable building codes.

19. This Acknowledgment and Consent shall be binding upon and shall inure to the benefit of the Contractor and Lender, and their respective successors and assigns.

Dated: [DATE], 2025

[SIGNATURE PAGE FOLLOWS]

CONTRACTOR:

[INSERT CONTRACTOR]

By: _____
Name: _____
Its: _____

[Signature Page to Contractor's Acknowledgment and Consent]

**EXHIBIT A
TO THE
ASSIGNMENT AND SUBORDINATION OF CONSTRUCTION CONTRACT**

Legal Description of Land

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

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

Addressed as 602 Galena Street, Frisco, CO, 80443

**EXHIBIT B
TO THE
ASSIGNMENT AND SUBORDINATION OF CONSTRUCTION CONTRACT**

Copy of Contract

[See attached]

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