

**DEVELOPMENT AGREEMENT**

**BETWEEN**

**THE TOWN OF FRISCO**

**AND**

**THE NHP FOUNDATION**

**Dated as of May 23, 2023**

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THIS DEVELOPMENT AGREEMENT, dated as of May \_\_\_\_, 2023, (the “Effective Date”) and any amendments hereto made in accordance herewith (as from time to time amended and supplemented in accordance herewith, this “Agreement”), is made by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation (the “Town”), and THE NHP FOUNDATION, a District of Columbia nonprofit corporation (together with any permitted successors and/or assigns, “Developer”).

## 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 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”), which Exhibit is incorporated herein by reference;

C. The Town intends that the Town Property be used to develop affordable housing and for other incidental purposes in compliance with an intergovernmental agreement between the Town and the State of Colorado (through its Division of Labor and Employment) (the “State IGA”), attached as Exhibit C hereto, and in compliance with an intergovernmental agreement between the Town and Summit County (the “County IGA”), as Exhibit D hereto. The aforementioned Exhibits are incorporated herein by reference;

D. Developer is under contract to purchase certain real property that is commonly known as 101 West Main Street, Frisco, Colorado and that is legally described in Exhibit B hereto (the “Developer Property,” and together with the Town Property, the “Redevelopment Properties”);

E. Developer desires to develop the Town Property and Developer Property as affordable housing. Developer intends to submit an application to the Colorado Housing and Finance Authority (“CHFA”) for an allocation of 9% federal low-income housing tax credits (“LIHTC”) under Section 42 of the Internal Revenue Code of 1986 with respect to the Town Property and an application to CHFA for an allocation of Colorado tax-exempt bonding authority and 4% federal LIHTC along with an allocation of Colorado state housing tax credits for Developer Property;

F. Developer will form a limited partnership or limited liability company (the “Developer Property Ownership Entity”) to plan, entitle, acquire, finance, construct improvements on and own Developer Property and Developer has requested that the Town make a loan of \$2,500,000.00 to assist Developer in its acquisition of Developer Property. It is contemplated that Developer would form an affiliate to serve as the general partner or managing member of the Developer Property Ownership Entity and Developer or its affiliate would serve as the initial member or limited partner of the Developer Property Ownership Entity, which, if CHFA allocates 4% federal LIHTC along with an allocation of Colorado state housing tax credits to the Developer Property, would be replaced by a nationally-recognized tax credit investor which would be admitted as the investor limited partner or member of the Developer Property Ownership Entity;

G. Developer desires to form a limited partnership or limited liability company (the “Town Property Ownership Entity”) 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. It is contemplated that Developer would form an affiliate to serve as the general partner or managing member of the Town Property Ownership Entity and Developer or its affiliate would serve as the initial member or limited partner of the Developer Property Ownership Entity, which, if CHFA allocates 9% federal LIHTC to the Town Property, would be replaced by a nationally-recognized tax credit investor which would be admitted as the investor limited partner or member of the Town Property Ownership Entity;

H. The Town has considered the establishment of a housing authority under Chapter 29, Article 4, of the Colorado Revised Statutes, as amended (the “Town Housing Authority”), to assist in meeting the critical needs of development of affordable housing in the Town. If established, it is contemplated that an affiliate of the Town Housing Authority may serve as a special limited partner or member of each of the Developer Property Ownership Entity and the Town Property Ownership Entity, which may enable each such ownership entity to receive a property 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; and

I. Developer has agreed to design and construct each project on the Redevelopment Properties in accordance with this Agreement and with all applicable local, state and federal laws.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto 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 3.06.

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

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

“Developer Property” means the real property legally described in Exhibit B.

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

“Due Diligence Period” has the meaning set forth in Section 3.05.

“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” has the meaning set forth in Section 3.01.

“Indemnified Parties” has the meaning set forth in Section 11.01.

“Lease” or “Lease Agreement” has the meaning set forth in Section 2.02(d), the form of which is attached as Exhibit E.

“LIHTC” means federal LIHTC pursuant to Section 42 of the Internal Revenue Code, as amended.

“Loan” has the meaning set forth in Section 4.01.

“LURA” has the meaning set forth in Section 5.03.

“Permitted Exceptions” has the meaning set forth in Section 3.04.

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

“Redevelopment Properties” means the real property legally described in Exhibits A and B.

“State IGA” is that agreement attached as Exhibit C.

“Title Commitment” has the meaning set forth in Section 3.04.

“Title Company” has the meaning set forth in Section 3.06(a).

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

“Town Property” is that property described in Exhibit A, less approximately 12.5% to be reserved by the Town for its own use or purposes.

“Town Property Ownership Entity” has the meaning set forth in Recital “G” above.

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

“Town Housing Authority” has the meaning set forth in Recital “H” 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 DEVELOPMENTS.

### Section 2.01 Development of the Developer Property.

(a) Developer shall develop the Developer Property into not less than 49 Dwelling Units of affordable housing in accordance with the following unit mix and square footage:

Current Unit Mix			6%	31%	24%	27%	12%
Unit Type	Total Units	Square feet	30% AMI	50% AMI	60% AMI	80% AMI	100% AMI
Studio	15	364	1	6	3	3	2
1 Bedroom	19	728	1	4	6	6	2
2 Bedroom	15	910	1	5	3	4	2
3 Bedroom	-						
4 Bedroom	-						
	-						
<b>Total / Average</b>	<b>49 units</b>	<b>31,486</b>	<b>3</b>	<b>15</b>	<b>12</b>	<b>13</b>	<b>6</b>

Developer agrees to the foregoing unit mix and affordability requirements.

(b) Developer intends to submit an application to CHFA for an allocation of Colorado tax-exempt bonding authority and 4% federal LIHTC along with an allocation of Colorado state housing tax credits for the Developer Property.

(c) Subject to Unavoidable Delays, the construction of the Developer Property will commence on the earlier of (i) 180 days following the award of a LIHTC by CHFA for the development of the Developer Property; or 360 days from the Effective Date, and the construction of the improvements contemplated herein to the Developer Property shall be completed not more than sixteen (16) months after the start of construction.

(d) The Town or its affiliate (which may include the Town Housing Authority) shall have a first right of first refusal to acquire the Developer Property at the price and in accordance with the terms of any bona fide, third party offer which the Developer intends to accept. In addition, in the event that the Developer desires to directly or indirectly convey its partner or membership interests in the Developer Property Ownership Entity, the Town or its affiliate (which may include the Town Housing Authority) shall similarly have a first right of first refusal to acquire such interests at the price and in accordance with the terms of any bona fide, third party offer which the Developer intends to accept.

## Section 2.02 Development of Town Property.

(a) Developer shall develop the Town Property into not less than 45 Dwelling Units of affordable housing and the Town Property Office Space.

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

Current Unit Mix			7%	40%	13%	27%	
Unit Type	Total Units	Square feet	30% AMI	50% AMI	60% AMI	80% AMI	120% AMI
Studio	22	514	1	9	3	6	3
1 Bedroom	18	668	1	8	2	5	2
2 Bedroom	5	800	1	1	1	1	1
3 Bedroom	-						
4 Bedroom	-						
	-						
<b>Total / Average</b>	<b>45 units</b>	<b>27,332</b>	<b>3</b>	<b>18</b>	<b>6</b>	<b>12</b>	<b>6</b>

(c) Developer agrees that it will also construct on the Town Property a space of not less than 3,100 square feet designed for office use, in accordance with the State IGA and the Lease that obligates the Town with respect to the Town Property (the "Town Property Office Space"). After construction is complete, the office area will be offered for sublease by Developer on a triple net basis at fair market rent to the State of Colorado acting by and through its Department of Labor and Employment. The offer of lease shall be made pursuant to and in compliance with the State IGA (including but not limited to the provisions of the Right of First Refusal Agreement attached thereto as Exhibit B), and the Lease Agreement (including but not limited to the provisions of section 27.B thereof) that is attached hereto as Exhibit E and incorporated herein by reference.

(d) Developer intends to submit an application to CHFA for an allocation of 9% federal LIHTC under Section 42 of the Internal Revenue Code of 1986 with respect to the Town Property and an application to CHFA for an allocation of Colorado tax-exempt bonding authority and 4% federal LIHTC along with an allocation of Colorado state housing tax credits for the Developer

Property. The parties acknowledge that it may take multiple applications to receive the development subsidies each of these projects require. This agreement envisions that the properties may have to go through two LIHTC application rounds.

(e) Subject to Unavoidable Delays, the construction of the Town Property will commence on the earlier of (i) 180 days following the award of a LIHTC by CHFA for the development of the Town Property; or 360 days from the Effective Date, and the construction of the improvements contemplated herein to the Town Property shall be completed not more than sixteen (16) months after the start of construction.

(f) The Town or its affiliate (which may include the Town Housing Authority) shall have the following rights with respect to the Town Property:

(i) A right of first refusal to acquire a 50% tenant-in-common interest in the leasehold interest in the Town Property held by the Town Property Ownership Entity at the price and in accordance with the terms of IRC Section 42(i)(7) at the end of the tax credit compliance period, provided, that if IRC Section 42(i)(7) is legislatively reformed into a purchase option, the Town or its affiliate shall be entitled to acquire a 50% leasehold interest in the Town Property in accordance with the terms of such reformed IRC Section 42(i)(7); and provided further, that if the tax credit investor will not consent to the grant of a right of first refusal for a 50% tenant-in-common interest, the parties agree to cooperate to create an ownership structure that accomplishes the foregoing at no additional cost to the Town.

(ii) Such alternative structure shall be that NHPF has the right of first refusal ("ROFR") for a period of time (to be determined in negotiation with the Investor) and if it exercises it, the Town shall have the right to purchase a 50% interest in the property at the cost of 50% of NHPF's cost to exercise its ROFR right.

(iii) If NHPF doesn't exercise its ROFR, an eligible Town entity shall have the right to exercise the ROFR and NHPF will have the right to purchase a 50% interest in the property at the cost of 50% of the Town's cost to exercise its ROFR right.

(iv) In the event that the Developer desires to directly or indirectly convey its partner or membership interests in the Town Property Ownership Entity, the Town or its affiliate (which may include the Town Housing Authority) shall have a first right of first refusal to acquire such interests at the price and in accordance with the terms of any bona fide, third party offer which the Developer intends to accept.

(v) A right of first option to acquire the leasehold interest of the Town Property at the fair market value of the Town Property as provided in the partnership agreement or operating agreement for the Town Property Ownership Entity, as agreed to by the Town.

(vi) In the event that any option or right of first refusal to acquire the leasehold interest in the Town Property or ownership interests in the Town Property Ownership Entity are held by Developer and not exercised by Developer, the Town or its affiliate shall have a backup option or right of first refusal equal to what is held by and not exercised by Developer.



(vii) A memorandum shall be recorded in the Summit County real property records addressing the provisions of this Section 2.02(g) in favor of the Town at the time of the closing of the LIHTC construction financing.

**Section 2.03 Developer Obligations with Respect to Redevelopment Properties.**

(a) Any change in the number of units, size or affordability requirements in the Dwelling Units on either of the Developer Property or 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 any and all development applications, and take any and all actions that are legally necessary or desirable to Developer to develop the properties in accordance with the parameters defined within the Agreement. Developer will be solely responsible for the development costs and costs of construction of the Redevelopment Properties. Developer shall be solely responsible for all guarantees related to the approved projects.

(c) The Town's form of affordability covenant attached hereto as Exhibit F for the density bonus will be filed in the real property records of Summit County, encumbering both of the Redevelopment Properties ("Affordability Covenant"). The Affordability Covenant will not be subordinated to any financing for the project(s) on either the Town Property or the Developer Property.

(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 Redevelopment Properties to be Net-Zero Energy projects and / or maximizing sustainability features, and any failure of the Redevelopment Properties 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 any and all books and financial records of Developer that may relate to the Redevelopment Properties from time to time, and to cause an audit of the same at the Town's expense, in order to ensure compliance with the terms and conditions of this Agreement.

(f) Developer's developer fee for the residential component of the project(s) on the Developer Property and the Town's Property shall not exceed the maximum allowed by the then applicable qualified allocation plan of CHFA. Developer shall be entitled to a commercially reasonable developer fee for the non-LIHTC space in the project(s). The Town or its affiliate (which may include the Town Housing Authority) shall be entitled to a payment equal to 10% of the developer fee payable to Developer or its affiliate with respect to the development of the

Developer Property and the Town's Property, payable pari passu with any payments of developer fee to Developer or its affiliate.

(g) Developer understands that the Town may subsidize or encourage the development of other developments in the Town, including properties that compete with the Redevelopment Properties, 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 Redevelopment Properties will be favored over the development of other properties.

(h) As of the Effective Date, Developer has not identified a funding source to pay for construction of the minimum amount of commercial space required by Town Code for the Redevelopment Properties (collectively, the "Commercial Space"). The parties agree to work together in good faith to identify and obtain funding sources for construction of the Commercial Space. The Town agrees to work with Developer to secure a lease with the State for the workforce center to occupy commercial space at the Developer Property. If binding commitments for funding the Commercial Space have not been secured as of the third anniversary of the Effective Date, the Town may terminate this Agreement upon written notice to Developer and the Town and Developer shall proceed in accordance with the provisions of Section 7 below.

(i) Developer agrees to develop the Redevelopment Properties 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 3 LEASEHOLD ESTATE OVER THE TOWN'S PROPERTY.**

Section 3.01 Lease Option. On the Effective Date, the Town agrees to enter into a ground lease option with Developer for the Town Property in substantially the form attached as Exhibit G. The form of lease option is intended to satisfy CHFA's requirements for site control for LIHTC applications. The lease option shall allow for Developer to assign its rights to the Town Property Ownership Entity, and shall require a form of ground lease acceptable to Developer and the Town in their sole and absolute discretion (the "Ground Lease"), on the terms and conditions set forth in this Agreement. Specifically, the Ground Lease shall have a term not in excess of sixty-five (65) years, provided, that if required by the tax credit investor to the Town Property Ownership Entity, such term may be increased to seventy-five (75) years. The Ground Lease shall be a triple net lease pursuant to which Town Property Ownership Entity shall pay all costs relating to the Town Property and all improvements located thereon. Rent shall be payable in the amount of \$1.00 annually, which may be prepaid.

Section 3.02 Property Inspection. On and after the Effective Date, the Town may 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 3.03 Materials to be Delivered. Within twenty (20) days after the Effective Date, the Town shall 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 3.04 Developer's Due Diligence. Developer shall have ninety (90) days after the Effective Date (the "Due Diligence Period") during which to inspect the Town Property and to review all matters affecting or relating to the Town Property and improvements thereon, including, but not limited to, the location, availability and adequacy of utilities, engineering, soil conditions, tests, surveys, the economic feasibility of the development of the Town Property, and the financing for acquisition of the Town Property and development of the improvements thereon as contemplated by this Agreement, as well as other studies or analyses deemed necessary or desirable by Developer (including any environmental assessment(s) provided by the Town). If, as a result of such inspection and review, Developer finds the Town Property unsatisfactory and delivers written notice to the Town of the exact nature of such unsatisfactory condition(s) within the Due Diligence Period, then the Town shall make good faith efforts, at sole cost of Developer to cure such unsatisfactory condition(s) within ten (10) days after the receipt of such notice. In the event that the Town is not able to cure such unsatisfactory conditions at such cost within said ten (10) day period, Developer will have the right to terminate this Agreement by notifying the Town in writing of such termination within ten (10) calendar days after such ten (10) day period and the Town and Developer shall proceed in accordance with the provisions of Section 7 below.

Section 3.05 Survey and Title Evidence.

- (a) The Town shall, within twenty (20) days after the Effective Date, deliver to Developer, at the Town's expense, a leasehold estate owner's title commitment (the "Title Commitment") issued by Land Title Guarantee Company in Frisco, Colorado ("Title Company"), covering the Town Property, together with legible copies of all exception documents disclosed by

such Title Commitment, with the effective date of the insurance policy to be the date of Closing. Town shall pay the cost of the Title Commitment at the Closing. If required by the Title Company in order to insure the property in the amount set forth in this subsection (a), Developer may obtain an appraisal and survey of the Property at its cost and provide copies thereof to the Town.

(b) Written notice of unmerchantability of title to the Town Property or of any other unsatisfactory title condition shown by the Title Commitment shall be given by or on behalf of Developer on or before the end of the Due Diligence Period. If the Town does not receive Developer's notice on or before the end of the Due Diligence Period, Developer accepts the condition of title as disclosed by the Title Commitment as satisfactory. If the Town timely receives notice of unmerchantability of title or any other unsatisfactory title condition(s), the Town may use reasonable efforts, at no cost to the Town, to correct such title condition(s). If such condition(s) are not corrected fifteen (15) days after receipt of Developer's notice, Developer will have the right to terminate this Agreement by notice to the Town given within five (5) business days after such fifteen (15) day period and the Town and Developer shall proceed in accordance with the provisions of Section 7 below.

Section 3.06 Closing. Closing of the acquisition by Developer from the Town of the leasehold interest in the Town Property pursuant to the Ground Lease will take place within ten (10) business days after the Town issues a building permit for the improvements on the Town Property. 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; (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) The 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 that was obtained by the Town pursuant to this Agreement.

Section 3.07 "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 4      TOWN LOAN FOR ACQUISITION OF DEVELOPER PROPERTY.**

Section 4.01    The Town agrees to make a loan not to exceed \$2,500,000.00 to Developer solely for the purpose of enabling Developer to acquire the Developer Property (the “Loan”).

Section 4.02    In connection therewith, Developer agrees to execute a nonrecourse promissory note bearing simple interest of 5% annually, secured by a second Deed of Trust (the “Deed of Trust”) over the Developer Property and a pledge of the Developer’s general partner or managing membership interest in the Developer Property Ownership Entity (which pledge shall terminate upon the closing of construction financing).

Section 4.03    No payments will be due on the Loan until the earlier to occur of (a) the date that the first lien construction financing for the LIHTC project on the Developer Property closes, and (b) the date that the first lien acquisition loan matures, which shall not be later than four years from the date of Developer’s acquisition of the Developer Property. If Developer’s first lien acquisition loan lender requires that the Town execute a subordination and standstill agreement, the Town will not unreasonably withhold, condition, or delay its consent to the same.

Section 4.04    If, before the LIHTC construction financing closes, either (a) the first lien acquisition loan matures or (b) this Agreement is terminated, then, subject to any subordination and standstill agreement then in effect, the Town may accelerate the Loan, and Developer shall pay the Town all outstanding principal and interest owed on the Loan within 10 business days after notice of acceleration from the Town.

Section 4.05    If the LIHTC construction financing closes prior to the maturity date of the first lien acquisition loan, the parties agree as follows.

(a)      The term of the Loan will be automatically extended to be the greater of (a) 30 years from the date that the LIHTC construction financing closes, and (b) a term not less than the term of any first lien construction or permanent mortgage financing secured by the Developer Property.

(b)      The Loan will be payable out of 10% of the Developer Property Ownership Entity’s net cash flow after payment of operating expenses and senior indebtedness, amounts payable to any tax credit investor, and payments of developer fee.

(c) To the extent that, at the time of a LIHTC construction closing with the construction lender and tax credit investor, the amount projected to be paid to the Town by the end of the tax credit initial compliance period pursuant to section 2.03(f) (developer fee) combined with the projected payments on the Loan described in this Section 4.05 is less than \$500,000, then the Loan documents will require Developer to pay (or cause the Developer Property Ownership Entity to pay) the Town the remaining amount necessary to reach such combined total of \$500,000 no later than the first refinancing of the first lien permanent loan, subject to the consent of the first mortgage lender engaged in a refinancing.

Section 4.06 The Loan shall be pre-payable without penalty.

## **SECTION 5 TOWN HOUSING AUTHORITY PARTICIPATION.**

The Town Housing Authority through a wholly owned subsidiary, shall be entitled to become a special limited partner or member of each of the Town Property Ownership Entity and the Developer Property Ownership Entity, under the terms outlined below:

Section 5.01 Town Housing Authority may acquire a 0.01% non-managing member (non-managing/non-controlling) interest in the Town Property Ownership Entity or the Developer Property Ownership Entity pursuant to an Addendum to be executed at the financing closing of the applicable Redevelopment Property.

Section 5.02 Developer agrees to pay all out-of-pocket expenses, including, without limitation, all legal fees, applicable to Town Housing Authority's admission as a special limited partner or member of either of the Town Property Ownership Entity and the Developer Property Ownership Entity.

Section 5.03 At the end of the 15 year compliance period and every 3 years thereafter, the Town Housing Authority will review the economic health of each Redevelopment Property and other conditions and determine whether continuing the property tax exemption for the subsequent years is needed for the property to be financially viable based upon the affordability restrictions imposed by the land use restriction in favor of CHFA (the "LURA"), the Affordability Covenant, and financing documents. If the Town Housing Authority reasonably concludes that the property tax exemption is not needed for such property to be financially viable, the Town Housing Authority may withdraw as a special limited partner or member of the Town Property Ownership Entity or the Developer Property Ownership Entity, as applicable. If the Town Housing Authority reasonably determines that the property tax exemption is still necessary for the financial viability of the property, in full or in part, Town Housing Authority will remain as a special limited partner or member of the Town Property Ownership Entity and the Developer Property Ownership Entity, as applicable.

Section 5.04 Upon any material violation by Town Housing Authority of the partnership agreement or operating agreement of the Town Property Ownership Entity and the Developer Property Ownership Entity, as applicable, which causes material adverse harm to such entity and not cured within a reasonable time after written notice from the Developer, the Developer shall have the option to purchase Town Housing Authority's partnership or membership interest for a price equal to \$100.00.

Section 5.05 The Town Housing Authority will receive copies of the standard operating, leasing, financial and other reports, audits and tax returns, that are provided to the tax credit investor in the same frequency as required by the tax credit investor, or, to the extent that the tax credit investor is not a partner or member in the Town Property Ownership Entity and the Developer Property Ownership Entity, as applicable, the Town Housing Authority shall be entitled to receive copies of the standard operating, leasing, financial and other reports, audits and tax returns, on the same basis as existed when the tax credit investor was a partner or member in such entity or such other basis as agreed to in writing by the Town. Failure to provide such reports within the defined timeframe will result in a \$100.00 per day penalty payable by the Developer to the Town Housing Authority, beginning on the date that the Town Housing Authority provides written notice of such default.

Section 5.06 The Developer will provide a complete set of closing documents to the Town Housing Authority within thirty (30) calendar days after execution of the documents provided the same have been delivered to the Developer. Failure to provide such documents within such thirty (30) days, after ten days following written demand therefore, will result in a \$100.00 per day fee payable to the Town Housing Authority until documents are provided and/or the Town Housing Authority exercises default provision and withdraws as a partner or member of such entity. The Town Housing Authority 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 5.07 The Town Housing Authority shall have the right to withdraw as a partner or member of the either of the Town Property Ownership Entity or the Developer Property Ownership Entity, as applicable, upon thirty (30) days written notice to Developer, upon any of the following: (i) a material breach by the Developer, Town Property Ownership Entity or the Developer Property Ownership Entity, as applicable, 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 the Developer and the tax credit investor or if such breach is not able to be cured within thirty (30) days then within sixty (60) days, so long as the Developer is diligently pursuing a cure within the first thirty (30) day period; (ii) a failure of the Town Property Ownership Entity and the Developer Property Ownership Entity, as applicable, to comply with the LURA and such failure is not cured within ninety (90) days following written notice thereof by CHFA to the such entity; (iv) a failure of the Town Property Ownership Entity and the Developer Property Ownership Entity, as applicable, to maintain its applicable Redevelopment 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 the developer and tax credit investor or, if such breach is not able to be cured within thirty (30) days, then within sixty (60) days, so long as the Developer is diligently pursuing a cure within the first thirty (30) day period; (v) the admission of a new general partner or managing member to the Town Property Ownership Entity and the Developer Property Ownership Entity, as applicable, without the consent of the Town Housing Authority which is unrelated to developer, other than pursuant to the removal and replacement of such general partner or managing member pursuant to the partnership agreement or operating agreement; (vi) the refinancing of company debt, unless the Town Housing Authority has consented to the refinancing, which consent shall not be unreasonably withheld if the Developer establishes to the satisfaction of the Town Housing Authority 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 the Town Property Ownership Entity or the Developer Property Ownership Entity, as applicable, as borrower, to satisfy general partner construction completion or operating deficit guaranty obligations, which repayments are permitted so long as the Town has been paid at least \$500,000 on the Loan as of the refinancing date, consistent with section 4.05(c) above) and the applicable Redevelopment Property is anticipated to operate at a minimum 1.20 debt service coverage ratio after the closing and funding of such refinancing; (vii) a change in Colorado law that no longer permits the Town Housing Authority to provide a property tax exemption to the project; or (viii) an event of bankruptcy with respect to the Town Property Ownership Entity and the Developer Property Ownership Entity, as applicable.

## **SECTION 6 DEVELOPMENT AND FINANCING APPROVALS.**

### **Section 6.01 Development Approval.**

(a) Developer shall make all necessary applications required for the construction associated with the Project through the Town as required by the Town's ordinances and regulations; including, but not limited to the following:

(b) Sketch plan procedures found in Chapter 180 of the Town Code; and

(c) Development plan procedures found in Chapter 180 of the Town Code.

Section 6.02 Sketch Plan. On or before the 210<sup>th</sup> day after the Effective Date, Developer shall have made application to the Town for a sketch plan approval for the development of the Redevelopment Properties. If Developer fails to make such application within said time period, the Town may terminate this Agreement by written notice to Developer and the Town and Developer shall proceed in accordance with the provisions of Section 7 below.

Section 6.03 Development Application. On or before the 270<sup>th</sup> day after the Effective Date, Developer shall have made application to the Town for development plan approval for the development of the Redevelopment Properties. If Developer fails to make such application within said time period, Developer shall be in default of this Agreement and the Town and Developer shall proceed in accordance with the provisions of Section 7 below.

Section 6.04 Time Periods for Required Actions. On or before July 1, 2025, the Developer shall demolish the existing structure on the Town Property and commence construction of the project thereon. In the event that the Developer shall fail to demolish the existing structure and commence construction on the Town Property on or before July 1, 2025, the 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 as a result of said failure. On or before July 1, 2027, the Developer shall cause residential occupancy of the project on the Town Property. In the event that the Developer shall fail to cause residential occupancy of the project on the Town Property on or before July 1, 2027, the 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 as a result of said failure. Without limitation of the foregoing requirements, on or before the third anniversary of the Effective Date, 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 each Redevelopment Property pursuant to the approved development plan for each Redevelopment Property. If Developer fails to make such application within said time period, Developer shall be in default of this Agreement but solely with respect to such Redevelopment Property for which the Developer has not submitted an application to the Town for a building permit and the Town may exercise remedies under Section 9.02 affecting such Redevelopment Property.

Section 6.05 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 Redevelopment Properties 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 Redevelopment Properties, 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 in order to obtain approval of the development of the Redevelopment Properties will be a quasi-judicial decision, which decisions are often to be made only after public hearing. Accordingly, in the event that either Redevelopment 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 7 below.

Section 6.06 Financing Approvals. If CHFA or 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.

## **SECTION 7      CERTAIN TERMINATIONS.**

This Section 7 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 7 below." In such circumstances, this Agreement and the Lease Option shall terminate; if the Affordability Covenant has been recorded, the Town will execute and record a release; if a memo of Lease Option has been recorded, the parties will execute and record a release; if the Loan has been made, the Town may accelerate it, and Developer shall pay the Town all outstanding principal and interest owed on the Loan within 10 business days after notice of acceleration, and upon receipt of such repayment the Town will record a release of its deed of trust securing the

Loan; 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 8      REPRESENTATIONS AND WARRANTIES.**

### **Section 8.01    Representations and Warranties by Developer.**

Developer represents and warrants that:

(a)      It has a legally binding purchase agreement to acquire the entire fee simple interest in the Developer Property and 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 the entity is duly organized and validly existing under the laws of the State of Colorado, that it is not in violation of any provisions of its governing documents or the laws of the State of Colorado, 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 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 it is bound;

(c)      Developer will develop the Redevelopment Properties in accordance with all federal, state and local laws, and will comply with all requirements of the State IGA and County IGA and related Lease as they pertain to the development of the Redevelopment Properties;

(d)      The construction of the development of the Redevelopment Properties 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 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 Project; and

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

**Section 8.02    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 the power to enter into and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder;

(c) 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;

(d) 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 State IGA and 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; and

(e) Town will cooperate with Developer with respect to any litigation brought by a third party concerning the Project or this Agreement, except where by the nature of the litigation the Town and Developer are adverse.

## **SECTION 9      EVENTS OF DEFAULT.**

Section 9.01 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 either Redevelopment 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 either Redevelopment Property, Developer, Town Property Ownership Entity or Developer Property Ownership Entity 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 Developer, Town Property Ownership Entity or Developer Property Ownership Entity, 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 Developer, Town Property Ownership Entity or Developer Property Ownership Entity, or of either Redevelopment Property, or part thereof, shall be appointed in any proceeding brought against Developer, Town Property Ownership Entity or Developer Property Ownership Entity, and shall not be discharged within 60 days after such appointment, or if Developer, Town Property Ownership Entity or Developer Property Ownership Entity, 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 and the tax credit investor for either Redevelopment Property 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 9.02 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;

(c) Prior to the admission of any tax credit investor as a partner or member to the Developer Property Ownership Entity, the Town may declare the Loan immediately due and payable and foreclose the Deed of Trust; and

(d) 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 9.03 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 9.04 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 10 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 any and all obligations hereunder only if Developer no longer has an ownership interest in Developer Property. Any sale, transfer, assignment, pledge or hypothecation of an interest in the Town Property Ownership Entity or Developer Property Ownership Entity that results in a change in control of that entity (other than a change in control mandated by a tax credit investor pursuant to the applicable partnership agreement or operating agreement for the Town Property Ownership Entity or Developer Property Ownership Entity) will constitute an assignment of this Agreement. However, NHPF shall have the right to assign or transfer its interest in the properties to any entity that it controls.

## **SECTION 11 INDEMNIFICATION OF TOWN AND TOWN HOUSING AUTHORITY.**

Section 11.01 Developer releases from and covenants and agrees that the Town, its affiliated entities (including the Town Housing Authority), and its governing bodies' members, 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 about or resulting from any defect in the Redevelopment Properties or any other loss, cost expense, or penalty. Developer's indemnification obligation does not apply to the extent the Town is determined to have committed willful or wanton misconduct.

Section 11.02 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 if 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 Redevelopment Properties; including, without limitation, any pecuniary loss or penalty. In furtherance of the foregoing, Developer acknowledges that the Town shall be responsible for performing in accordance with the terms and conditions of the County IGA and the State IGA and related Lease and that Developer shall bear such responsibility and shall indemnify the Town from

any claims made under either the State IGA or County IGA arising out of the actions or omissions of Developer. Notwithstanding the foregoing, the Town shall not be indemnified if it sustains any harm related to the unauthorized withdrawal of the Town Housing Authority as an owner of membership or partnership interests in either of the Town Property Ownership Entity or the Developer Property Ownership Entity, nor shall the Town be indemnified to actions taken by the Town in its quasi-judicial capacity.

Section 11.03 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 11.04 If Developer shall default under any of the provisions of this Agreement, and the Town shall employ attorneys or incur other reasonable expenses for the collection of payments due hereunder, including acceleration of the Loan, or for the enforcement of performance or observance of any obligation or agreement on the part of Developer contained in this Agreement, Developer will within thirty (30) days of request therefor reimburse the Town for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 11.05 All provisions of this Section 11 shall survive the termination of this Agreement.

## **SECTION 12 MISCELLANEOUS.**

Section 12.01 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: The NHP Foundation  
c/o Neal Drobenare

1090 Vermont Ave NW, Suite 400  
Washington DC 20005

With a copy to: Bryan Cave Leighton Paisner LLP  
1801 13th Street, Suite 300  
Boulder, CO 80302-5386  
Attn: Ben Doyle, Esq.

Section 12.02 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 12.03 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 12.04 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 12.05 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 12.06 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 12.07 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 12.08 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 12.09 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 12.10 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 12.11 Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

Section 12.12 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 12.13 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.

[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

\_\_\_\_\_  
Hunter Mortensen, Mayor

STATE OF COLORADO     )  
  ) ss  
COUNTY OF SUMMIT     )

The foregoing instrument was acknowledged before me as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Hunter Mortensen, 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: \_\_\_\_\_

DEVELOPER

THE NHP FOUNDATION

\_\_\_\_\_

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

Its: \_\_\_\_\_

STATE OF )  
 ) ss  
COUNTY OF )

The foregoing instrument was acknowledged before me as of the \_\_\_\_ day of  
\_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_

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**

**LEGAL DESCRIPTION OF DEVELOPER PROPERTY**

Lot B-1, Amended West Frisco 70, Filing No. 2, according to the plat filed April 16, 1974 under reception no. 140796, County of Summit, State of Colorado.

Addressed as 101 West Main Street, Frisco, CO, 80443

**Exhibit C**  
**STATE IGA**

**Exhibit D**

**COUNTY IGA**

**Exhibit E**

**FORM OF SPACE LEASE AGREEMENT WITH STATE**

**Exhibit F**

**FORM OF AFFORDABLE HOUSING COVENANT**



**Exhibit G**

**FORM OF GROUND LEASE OPTION FOR TOWN PROPERTY**

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