

After recording return to:  
ANB Bank  
David E. Wright  
Community Bank President  
1360 Walnut Street  
Boulder, CO 80302

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## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the “Agreement”), is made and entered into as of the 5<sup>th</sup> day of April, 2022, by and among Thistle Community Housing, a Colorado non-profit corporation (“Borrower”), COUNTY OF BOULDER, COLORADO, a body corporate and politic (“County”), and ANB Bank (the “Bank”).

### RECITALS:

A. Borrower is the owner of the real property located in the County of Boulder, Colorado, which is legally described on **Exhibit A**, attached hereto and incorporated herein by reference (“Property”) subject to the Subordinate Deed of Trust (described below).

B. Borrower received from the County funds in the amount of \$50,000 pursuant to a Promissory Note (“Subordinate Note” and the obligations under the Subordinate Note and all related documents and instruments are hereafter referred to as the “Subordinate Note Documents”). The Subordination Note Documents together with any other loans from the County to Borrower relating to the Property, as each such may be modified, amended, supplemented, substituted, or replaced, are collectively referred to herein as the “Subordinate Debts.”

C. The Subordinate Debts are secured by a Deed of Trust granted by the Borrower for the benefit of the County and recorded on May 31, 2012 at Reception No. 03226389 (as the foregoing has or may be modified, amended, supplemented, substituted or replaced, “Subordinate Deed of Trust”). The Subordinate Note Documents and the Subordinate Deed of Trust together with all other documents or instruments executed and relating thereto and each as modified, amended, supplemented, substituted or replaced from time to time, are hereafter the “Subordinate Loan Documents.”

D. On or about even date herewith, Bank is loaning to Borrower an amount not to exceed \$4,012,500.00 (“Bank Loan”).

E. The Bank Loan is evidenced by a Promissory Note granted by Borrower for the benefit of the Bank (as modified, amended, supplemented, substituted or replaced, “Bank Note”) and is secured by among other things a first lien Deed of Trust encumbering the Property (the

“Bank Deed of Trust”), among other collateral (collectively, all collateral documents securing the Bank Note and all other obligations referenced in any such instrument as each such instrument is modified, amended, supplemented, substituted or replaced, are collectively referred to herein as the “Bank Security Instruments,” and the Bank Security Instruments together with all documents evidencing or relating to the Bank Loan, each as may be modified, amended, supplemented, substituted or replaced are collectively referred to herein as the “Bank Loan Documents”).

F. The Bank has agreed to make the Bank Loan only upon the execution of this Agreement by County and Borrower.

NOW, THEREFORE, in consideration of the Recitals, which are hereby made a part hereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Subordination to the Bank Deed of Trust. The Borrower and the County, each as applicable, hereby subordinates the Subordinate Loan Documents, along with any and all other of each of their right, title and interest in and to the Property and any rents and proceeds thereof to the Bank Loan Documents and any amendments, modifications or extensions thereto.

2. Subordination of Right, Title, and Interest of County in the Property. All right, title and interest of the County in and to the Property, and rents and proceeds thereof, pursuant to the Subordinate Loan Documents shall in all respects be junior, subordinate and subject to the prior right, title and interest of the Bank in and to the Property, and rents and proceeds thereof, pursuant to the Bank Loan Documents.

3. Limitations on Payment. The County shall not receive, or take action to collect or enforce, payment from Borrower, and Borrower will not make payment to the County, of any amounts outstanding under the Subordinate Debts. Upon the occurrence of an Event of Default as defined in the Bank Loan Documents, Bank shall give notice to County, and the County shall not, without the prior written consent of the Bank, receive or take any action to collect or enforce, payment of the Subordinate Debts or any part thereof from any trustee in bankruptcy, receiver, or other liquidator of any part of Borrower’s property, or from any other person. Until payment in full of the Bank Note any payment received by the County in violation of the immediately preceding sentence shall promptly be delivered to the Bank for application to the Bank Note. The County and Bank agree to notify each other, within a reasonable time period, of their knowledge of an event of default under their respective instruments.

4. Release of Subordinate Covenant and Subordinate Loan Documents. Upon an Event of Default and Bank’s election to foreclose the Bank Deed of Trust or take a deed in lieu thereof, the County shall promptly execute and deliver to Bank or any third party successful bidder at foreclosure sale such instruments as may reasonably be necessary to terminate or release any covenants or grant agreements, relating to the Subordinate Loan Documents with respect to the Property foreclosed or transferred by deed-in-lieu thereof. County agrees that if it fails to execute any releases required under this Section within ten (10) days of satisfaction of the above requirements, such releases will be automatic with no further action necessary on the part of Bank.

5. Default. Upon the occurrence of an Event of Default, and prior to the commencement of foreclosure by Bank under the any of the Bank Loan Documents, Bank agrees it shall provide notice of such default to the County and provide to the County the same number of days to cure such default that are provided to Borrower in the Bank Loan Documents to cure such defaults; on the condition that (i) Bank shall only be required to provide notice of default to the County if Bank is required to provide notice of such default to Borrower in the Bank Loan Documents; (ii) the County shall be entitled to a cure period for default only to the extent that Borrower is entitled to a cure period for such default in the Bank Loan Documents; and (iii) the County's cure period shall be co-terminus with (and not in addition to) the cure period provided to Borrower.

Upon the occurrence of a default under the Subordinate Debts, the County agrees to provide to Bank a copy of any notice of default provided to Borrower.

6. Bank Priority. In the event of the bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the property of Borrower, or in the event Borrower shall become the subject of any proceeding of any character under any federal or state bankruptcy or insolvency act or law, all moneys and other property allocated or allocable to the Subordinate Debts shall be paid and delivered directly to the Bank for application by the Bank to the Bank Note, in such order as the Bank shall elect, until full payment of the Bank Note with the excess, if any, to be paid to County.

7. Loan Priority. The parties acknowledge and agree that, notwithstanding any other provisions of this Agreement or any loan document to the contrary, the Bank Loan Documents shall be first and prior to any of the Subordinate Loan Documents.

8. Condemnation Awards and Insurance Proceeds. Until repayment in full of the Bank Loans, the County agrees that any and all rights of either of the County, including without limitation any and all rights to condemnation awards or insurance proceeds, shall be, and are hereby expressly made, subject and subordinate to the lien of the Bank Deed of Trust and to the rights, interests and remedies of the Bank and its successors and assigns (including the purchaser at any foreclosure sale or the transferee of any transfer in lieu of foreclosure) under the Bank Deed of Trust. If following any such application or disposition of the insurance proceeds or condemnation awards and other compensation in accordance with the terms of the Bank Loan Documents any balance remains, then such excess shall be made payable to the County.

9. Pay Over of Monies. In the event that the County receives any payment or property on or under the Subordinate Debts whether condemnation, insurance proceeds or in violation of the terms of this Agreement, such payments shall be held in trust by the County, and it will forthwith pay over or deliver the same to the Bank to be held by Bank as cash collateral securing the Bank Note or applied to the Bank Note.

10. Undertakings Unaffected. The County's undertakings herein shall not be affected or impaired by (a) any neglect or omission on the part of the Bank to preserve any collateral at any time securing payment of the Bank Note, or (b) any act on the part of the Bank in releasing, canceling, or surrendering all or part of such collateral, or in extending the time for payment with respect to all or any part of the Bank Note or such collateral, or in enforcing or realizing upon

such collateral. No notice whatsoever need be given to the County at any time of any payments made under the Bank Note or with respect to any collateral securing the Bank Note. Notwithstanding anything to the contrary contained herein, Bank agrees that it will not (a) extend the maturity of the Bank Note, or (b) increase the amount of the Bank Loan without the prior written consent of the County.

11. Limitation on Transfer. The County will not assign, pledge or otherwise transfer, or permit or suffer to be assigned, pledged or otherwise transferred, or execute any power of attorney with respect to, the Subordinate Debts, or any part thereof, except upon prior written notice to the Bank and unless such assignee, pledgee, or transferee agrees in writing to be bound by the terms and conditions of this Agreement.

12. Acceleration. In the event of any breach of this Agreement, the Bank shall have the right, at its option, and in addition to any other rights the Bank may have, to declare the Bank Note immediately due and payable without notice or demand.

13. Continuing Nature of Subordination. This Agreement shall be irrevocable and shall continue effective until the Bank Loan has been paid in full and all financing arrangements between Borrower and the Bank relating to the Bank Loan have been terminated. The agreement of the County to subordinate to the Bank Loans shall be limited to the principal amount of the Bank Loans, together with interest, default interest, fees and charges that may be incurred in connection with the Bank Loans, all as described in the Bank Deed of Trust including, but not limited to, real estate tax and insurance payments and any and all modifications of the Bank Loan.

14. Successors and Assigns. This Agreement is binding not only upon the County and Borrower, but also upon the successors and assigns of each of them and is enforceable not only by the Bank but also by its successors and any assignee of or participant in the Bank Note.

15. Governing Law. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws of the State of Colorado.

16. Section Titles; Gender. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the masculine and feminine forms, and vice versa.

17. Notices. Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing and shall be deemed to have been validly served, given or delivered upon receipt when personally delivered or sent by facsimile transmission or overnight courier, or when duly deposited in the United States mails, certified or registered with proper postage prepaid, addressed to the party to be notified as follows:

If to Borrower: Paul D'Angelo  
Chief Executive Officer  
Thistle

6000 Spine Rd. #101  
Boulder CO 80301

If to Bank: David E. Wright  
Community Bank President  
1360 Walnut Street  
Boulder, CO 80302

If to County: County of Boulder  
Attention: Community Services - Worthy Cause  
P.O. Box 471  
Boulder, CO 80306

With a copy to: Boulder, County Attorney's Office  
Attn: Worthy Cause Attorney  
P.O. Box 471  
Boulder, CO 80306

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same document.

*[The remainder of this page has intentionally been left blank.]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**BORROWER:**

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

Its:

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of

\_\_\_\_\_.

Witness my hand and official seal.

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

[SEAL]

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

**COUNTY:**

COUNTY OF BOULDER, COLORADO,  
a public body corporate and politic

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

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF BOULDER     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020,  
by \_\_\_\_\_ as \_\_\_\_\_ of the County of Boulder, Colorado, a public  
body corporate and politic.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: \_\_\_\_\_

[ S E A L ]

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

**BANK:**

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

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2020,            by           \_\_\_\_\_            as           \_\_\_\_\_            of  
\_\_\_\_\_.

WITNESS my hand and official seal.

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

[ S E A L ]

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



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**LOT 19, EXCEPT THE SOUTHERLY 25 FEET THEREOF, AND ALL OF LOT 20,  
BLOCK B, EAST BOULDER ACCORDING TO THE PLAT RECORDED IN PLAT  
BOOK 2 AT PAGE 46, COUNTY OF BOULDER, STATE OF COLORADO.**