

BOULDER COUNTY WORTHY CAUSE FUNDING AGREEMENT

between

COUNTY OF BOULDER, STATE OF COLORADO

and

THE HOUSING AUTHORITY OF THE CITY OF BOULDER

AWARD AMOUNT: \$700,000

Worthy Cause Round: IV

Worthy Cause Year: 2022

Capital Funding Type:

- Debt Reduction**
- Purchase**
- Construction**
- Improvements/Renovations**

1. PARTIES

This Boulder County Worthy Cause Funding Agreement (hereinafter called “Funding Agreement”) is entered into by and between THE HOUSING AUTHORITY OF THE CITY OF BOULDER, COLORADO, D/B/A BOULDER HOUSING PARTNERS (hereinafter called the “Agency”), and the COUNTY OF BOULDER, Colorado, a body corporate and politic (hereinafter called the “County”). The Agency and the County are each a “Party,” and collectively are “Parties” to this Funding Agreement.

2. RECITALS

A. Authority, Appropriation, and Approval

The County has authority to enter into this Funding Agreement pursuant to Board of County Commissioners’ Resolution No. 2017-89 and 2017 County Ballot Issue 1A, “Worthy Cause 0.05% Countywide Sales and Use Tax Extension,” hereinafter referred to as “Worthy Cause IV,” which was adopted by the voters of the County of Boulder in November 2017.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient to support this Funding Agreement.

C. Purpose

i. **Worthy Cause IV:** The purpose of Worthy Cause IV is to address the critical need for capital facilities and equipment of nonprofit human services agencies and housing authorities that provide free or low-cost health, transitional and permanently affordable housing, and other human services, including but not limited to childcare and early childhood education, basic needs such as food and clothing, and services for the elderly and people with disabilities. Worthy Cause IV funds are collected by and through a voter-approved 0.05% countywide sales and use tax. Worthy Cause IV funds are awarded to select eligible nonprofit organizations and housing authorities for use in capital projects, including but not necessarily limited to, facility construction, property or facility purchases, facility renovations, and the reduction of capital debts such as mortgages or loans incurred to fund capital purchases, construction, or renovation.

ii. **Funding Agreement:** The purpose of this Funding Agreement is described in **Exhibit B**.

3. DEFINITIONS

The following terms as used herein will be construed and interpreted as follows:

Collateral Assignment of Note and Deed of Trust: “Collateral Assignment of Note and Deed of Trust” means the Collateral Assignment of Note and Deed of Trust in the form attached as **Exhibit C**, which will be executed by the Agency and recorded on the title to the Property.

Effective Date: The “Effective Date” of this Funding Agreement will be the date of the last Party signature, as reflected on the Signature Pages.

Event of Default: Each of the following events constitutes a breach of this Funding Agreement. An “Event of Default” will exist when any one or more of the following events continues to exist after the notice and cure period described in **§19(B)**.

- i. Following completion of the Project and the initial lease up of the affordable housing units on the Property, the failure of the Agency to use, or cause the Property to be used, for a period of 30 or more consecutive days as a necessary and integral part of the Program, as described in **Exhibit B**, unless such interruption is due to reasons beyond the reasonable control of the Agency, as determined by the County;
- ii. Material violation of this Funding Agreement;
- iii. Failure of the Agency to fulfill its obligations under **Exhibit B**;
- iv. All or any part of the Agency’s interest in the Property is sold, assigned, conveyed, hypothecated, alienated, or otherwise transferred without the County’s prior

written consent, except that the Agency may, without the County's prior written consent, transfer title to the Property to a limited liability limited partnership, the general partner of which is wholly owned by Agency, or any other affiliate of the Agency ("Project Partner"), for purposes of undertaking the Project;

v. The filing of a petition by the Agency for any proceedings under federal or state bankruptcy acts or other similar-type proceedings seeking protection from creditors not dismissed within 120 days thereafter;

vi. The giving by the Agency or the Project Partner, as applicable, of an assignment of any interest in the Property for the benefit of creditors, except for mortgages or deeds of trust given as security for one or more loans obtained by the Agency, or the Project Partner, as applicable, to finance the Program or from time to time in the ordinary course of business;

vii. The dissolution of the Agency as an entity other than in conjunction with a merger or consolidation of said entity into, or the transfer of the Property to, another or surviving entity which will thereby become the owner of the Property and continue the Program; or

viii. Any representation of the Agency made herein or made by the Agency or any agent of the Agency in any submission or document delivered by or on behalf of the Agency in connection with this Funding Agreement proves to be materially untrue at the time such representation was made.

Funding Agreement: "Funding Agreement" means this Funding Agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Funding Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein.

Funding Documents: "Funding Documents" means the Collateral Assignment of Note, Deed of Trust, and all such other documents, instruments and agreements and all amendments, replacements, extensions and renewals of any of the foregoing.

Party or Parties: "Party" means the Agency or the County and "Parties" means both the County and the Agency.

Program: "Program" means the program administered generally by the Agency or Project Partner on the Property as fully described in **Exhibit B**.

Project: "Project" means the capital undertaking proposed in the Agency's Worthy Cause IV Application that forms the basis for the Worthy Cause Award as fully described in **Exhibit B**.

Property: “Property” means the real property for which the Worthy Cause Funds will be used for capital purposes, the legal description of which is set forth in **Exhibit A**.

Services: “Services” means the core services to be performed by the Agency or the Project Partner as set forth in detail in **Exhibit B**.

Worthy Cause Funds: “Worthy Cause Funds” means funds payable by the County to the Agency pursuant to the Board of County Commissioners’ Worthy Cause IV award and this Funding Agreement.

4. INCORPORATION

All of the attachments and Exhibits to this Funding Agreement are incorporated by reference.

5. TERM

This Funding Agreement will commence on the Effective Date and will continue for a term of 99 years.

6. AGENCY OBLIGATIONS

The Agency will perform all of its obligations as described herein and in **Exhibit B**.

7. PAYMENTS TO AGENCY

The County will pay the Agency in the following amounts using the methods set forth below:

A. Maximum Amount: The maximum amount payable under this Funding Agreement to the Agency by the County is the Award Amount.

B. Conditions on County’s Obligation to Fund: The County will pay to the Agency the Worthy Cause Funds upon satisfaction of all of the following conditions, as determined by the County in its sole and absolute discretion:

- i. Receipt of an executed copy of this Funding Agreement;
- ii. Receipt of an executed Collateral Assignment of Note and Deed of Trust;
- iii. Receipt of a copy of the Agency’s W-9 Form;
- iv. Receipt of a copy of Title Report pursuant to **§8**;
- v. Receipt of a copy of Property Valuation pursuant to **§8**; and

- vi. Any other requirements as communicated in writing by the County to the Agency prior to the execution of this Funding Agreement.

C. Interest: In no event will the County pay any interest to the Agency.

D. Use of Funds and Property: The Agency must use the Worthy Cause Funds to make a loan to the Project Partner, the proceeds of which the Agency will cause the Project Partner to use solely for developing and operating the Project. The Agency's use of the Worthy Cause Funds will strictly comply with the terms of this Funding Agreement and the Funding Documents. The Agency will be the sole occupant of the Property and will use the Property solely in furtherance of the Program and provision of Services. Except that the County permits the Agency to allow occupancy of the Property by Project Partner or any another entity if such entity (1) is a § 501(c)(3) nonprofit organization and (2) provides human services consistent with the Agency's mission, as defined in **Exhibit B**. All other occupancy of the Property inconsistent with this paragraph, including for-profit leases, will be a material violation of this Funding Agreement.

E. Disbursement of Funds: The County will provide to the Agency instructions as to the disbursement of the Worthy Cause Funds. Upon confirmation that the Conditions on County's Obligation to Fund are satisfied, the County will remit, in accordance with the County's instructions, the Worthy Cause Funds to the Agency pursuant to the information on the Agency's W-9 Form.

F. No Guaranty of Future Awards: The disbursement of Worthy Cause Funds to the Agency will in no way guarantee that the Agency will receive additional Worthy Cause funds or other County funds in future years.

8. TITLE REPORT AND PROPERTY VALUATION

The Agency must provide to the County documentation issued within the past 12 months by an independent third-party professional entity evidencing (1) a legally reliable recitation of the Property's title history, such as a Title Report, Title Commitment, or Title Work, and (2) the valuation of the Property, such as an appraisal, broker's opinion, or Boulder County Assessor valuation.

9. ACKNOWLEDGEMENT OF RECEIPT

Upon receipt of the Worthy Cause Funds, the Agency will provide to the County an Acknowledgement of Receipt that includes the following information:

- a. Name and address of the Agency;
- b. Amount of funds received; and

- c. A description of how the funds were used.

10. COLLATERAL ASSIGNMENT OF NOTE AND DEED OF TRUST

The Agency will execute a Collateral Assignment of Note and Deed of Trust, which the County will record against the Property. The Collateral Assignment of Note and Deed of Trust will be executed by the Agency as soon after the execution of this Funding Agreement as practicable and promptly be submitted to the County. The County will file the Collateral Assignment of Note and Deed of Trust in the Boulder County Clerk and Recorder's Office.

11. [RESERVED]

12. REPORTING, NOTIFICATION

A. Performance

The County may request that the Agency provide a report containing a summary of the services provided by the Agency through the Program for the then-preceding 12 month period. The County may also request that the Agency provide financial statements to the County showing the Agency's financial condition and use of the Worthy Cause Funds. The Agency will provide the requested documents within 60 days of the County's request.

B. Reporting

Within 10 business days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Funding Agreement or which may affect the Agency's ability to perform its obligations hereunder, the Agency will notify the County of such action and deliver copies of such pleadings to the County's representative as identified herein.

If the Agency becomes aware of any situation, event, or condition which, to the best of its knowledge, would result in noncompliance of the Program, the Project, or the Agency with Colorado law, the Agency will promptly give written notice thereof to the County.

C. Annual Certification

On an annual basis, the Agency will submit to the County a written certification affirming the Agency's compliance with this Funding Agreement and any other Worthy Cause agreements currently in effect between the Agency and the County. Each written certification is due to the County by January 31 for the preceding calendar year. For example, the written certification for the current calendar year will be due on January 31st of the following calendar year.

13. COMPLIANCE AUDITING

A. Records Maintenance

The Agency will, or will cause the Project Partner to, make, keep, maintain, and allow inspection and monitoring by the County of a complete file of all records, documents, communications, financial statements, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Property, the Program, the Project, or the delivery of Services hereunder. The Agency will, or will cause the Project Partner to, retain all such records for a five-year period.

B. Inspection and Monitoring

The Agency will, or will cause the Project Partner to, permit the County to audit, inspect, examine, excerpt, copy and transcribe the Agency's or Project Partner's, as applicable, records related to this Funding Agreement to confirm compliance with the terms hereof. The Agency will, or will cause the Project Partner to, allow the County access to its records at any time during normal business hours upon 48 hours advance notice.

The Agency will, or will cause the Project Partner to, permit County access to the Property at all reasonable times and places during the term of this Funding Agreement. The County will provide the Agency, or the Project Partner, as applicable, with ten days' advance notice of its intention to enter the Property, except if the County reasonably determines there is an immediate need to take emergency action to prevent a material violation of this Funding Agreement.

If the Agency's, or Project Partner's, as applicable, use of the Property fails to comply with this Funding Agreement, or the County otherwise determines that the Agency is noncompliant with its obligations under this Funding Agreement, the County may require the Agency to promptly take action to comply with the Funding Agreement and may exercise the remedies available under this Funding Agreement, at law or in equity in lieu of or in conjunction with such corrective measures.

14. SUBSTITUTE COLLATERAL

With the passage of time, the Property may no longer be suitable for the Program, and it might be necessary for the Agency to secure an alternate property for the Program. Consequently, if the Agency notifies the County that it wishes to purchase another property in Boulder County to replace the Property, and the County determines in its sole discretion that the new Property is sufficient to protect the County's interests, the County will release the Collateral Assignment of Note and Deed of Trust recorded against the Property and the Parties will replace such instrument with an appropriate security instrument acceptable to the County in its sole discretion, to be recorded against the substitute property to secure the Agency's obligations through the remainder of the Funding Agreement Term. Notwithstanding anything to the

contrary herein, the Agency may assign its rights and obligations under this Funding Agreement pursuant to §25(A).

15. MODIFICATIONS TO THE PROGRAM AND THE SCOPE OF SERVICES

With the passage of time the needs of the community and other circumstances may require modifications to the Agency's obligations to administer the Program and provide the Services. Consequently, the Parties may agree to amend this Funding Agreement, along with the Collateral Assignment of Note and Deed of Trust, if necessary, to more closely align the Agency's obligations with then-current circumstances and needs of the community. A change in circumstances does not relieve the Agency of its obligations under this Funding Agreement until the County has agreed to amend this Funding Agreement. The County may decline to modify any terms of this Funding Agreement if the Agency fails to show a reasonable need therefor.

16. CONFLICTS OF INTEREST

The Agency will not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Agency's obligations hereunder. The Agency acknowledges that with respect to this Funding Agreement, even the appearance of a conflict of interest is harmful to the County's interests. Absent the County's prior written approval, the Agency will refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Agency's obligations to the County hereunder. If a conflict or appearance exists, or if the Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Agency will submit to the County a disclosure statement setting forth the relevant details for the County's consideration. Failure to promptly submit a disclosure statement or to follow the County's direction in regard to the apparent conflict constitutes a breach of this Funding Agreement.

17. REPRESENTATIONS AND WARRANTIES

The makes the following specific representations and warranties, each of which was relied on by the County in entering into this Funding Agreement.

A. Standard and Manner of Performance

The Agency will perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Funding Agreement.

B. Legal Authority – Agency and Agency's Signatory

The Agency warrants that it possesses the legal authority to enter into this Funding Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Funding Agreement, or any part thereof, and to bind the Agency to its terms.

C. Licenses, Permits, Etc.

The Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it will have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder.

D. Compliance with Laws

The Agency will comply with all applicable federal, state, and local laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

18. DELEGATION OF COUNTY SIGNATURE AUTHORITY

A. Authorized Officers: The Board of County Commissioners of Boulder County hereby delegates to the Chair, any commissioner, Program Administrator Meca Delgado, and any attorney in the County Attorney's Office (the "Authorized Officers") authority to sign all documents related to the Worthy Cause Funds, and to enter into and perform all of its obligations under and take all actions and enter into all contracts and agreements necessary to carry out of the intent of this Funding Agreement in the judgment of the Authorized Officers. All documents and agreements to be entered into by the County will be in form and substance acceptable to the Authorized Officers in the sole discretion of the Authorized Officers, such acceptance to be evidenced by any such person's execution of any such documents.

B. Execution and Delivery: The Authorized Officers are hereby authorized to execute and deliver, and hereby are authorized to affix the County seal and acknowledge, if required, on behalf of the County, any and all agreements, instruments and certificates as such persons in their sole and absolute discretion may deem appropriate or helpful in connection with this Funding Agreement, whether in connection with the closing of the transactions described above or thereafter, and agreements containing such terms and provisions as the Authorized Officer executing the same considers appropriate in his or her sole and absolute discretion, and to do such other acts and things as may be appropriate or helpful and consistent with carrying out the intent and purposes of this Funding Agreement, with the execution and delivery of any of the foregoing documents or the doing of any act or thing being conclusive evidence as to the appropriateness thereof as determined by the Authorized Officer executing or doing the same.

19. BREACH

A. Defined

In addition to any of the Events of Default, and any breach of this Funding Agreement or the Funding Documents, the failure of either Party to perform any of its obligations hereunder, in whole or in part, or in a timely or satisfactory manner, constitutes a breach.

The Agency has an affirmative duty to notify the County of the occurrence of any of the Events of Default or any other breach of this Funding Agreement within 10 business days of Agency's knowledge of said occurrence.

B. Notice and Cure Period

In the event that the County determines that the Agency has breached this Funding Agreement, the County will provide written notice to the Agency in the manner provided in §22 and to the persons and addresses listed in **Exhibit B**. If the Agency fails to cure the breach within 90 days of the delivery of the written notice, such uncured breach will constitute an Event of Default, entitling the County to exercise any of its remedies set forth in §21.

The County may determine that a breach is not reasonably capable of being cured within 90 days. In such cases, the Agency will have such additional time as is reasonably necessary to cure the breach, as determined by the County, prior to the County exercising any of its remedies, so long as the Agency takes the following action within the 90-day notice period:

- i. Initiates corrective action; and
- ii. Continues to diligently, continually, and in good faith work to effect a cure as soon as possible.

In no event will the County be precluded from exercising remedies if security or safety becomes or is about to become materially jeopardized by the Agency's breach or failure to cure, or if the breach is not cured within 180 days after first notice of breach is given.

Notwithstanding anything in this Agreement to the contrary, any other members, owners, or partners of any Project Partner will have the right, but not the obligation, to cure defaults of the Agency hereunder, and the County hereby agrees to accept any cure of any breach or default made or tendered by one or more of such Project Partner's members, owners, or partners on the same basis as if made or tendered by the Agency.

20. RIGHT TO ACCESS

The County will be permitted access to, and entrance upon, the Property at all reasonable times upon reasonable advance notice, where 48 hours advance notice will be presumed reasonable. The Agency will, or will cause the Project Partner to, as applicable, allow the County access to its records, which will include, but are not limited to, the Agency's financial statements. The Agency grants, and will cause the Project Partner to grant, as applicable, the County authority to make copies of any Agency or Project Partner, as applicable, records related to the Agency's or Project Partner's, as applicable, performance under this Funding Agreement as may be reasonably necessary, but only to the extent permitted by law.

21. REMEDIES

A. Authority to Pursue Available Remedies

In the event that the County declares an Event of Default, the County will have the remedies listed in this Section in addition to all other remedies set forth in other sections of this Funding Agreement or the Funding Documents. Upon an Event of Default, the County, at its option, may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

B. Remedies upon Uncured Default

i. **Declare Due and Payable:** Upon the occurrence of an Event of Default, the County will have the right to declare the amount of Worthy Cause Funds plus 5% interest due and payable (or so much thereof as the County has advanced hereunder), and to enforce its rights under this Funding Agreement and/or any of the Funding Documents, with any amount owing to the County to include the amount of Worthy Cause Funds plus 5% interest.

ii. **Enforcement Generally:** Except as otherwise provided in this Funding Agreement, upon an Event of Default the County will have the right (but not the obligation) to enforce by a proceeding at law or in equity, all restrictions, conditions, covenants and charges now or hereafter imposed by the provisions of this Funding Agreement. Failure by the County to enforce any covenant or restriction contained in this Funding Agreement will not be deemed a waiver of the right to do so thereafter. The prevailing party in any judicial proceeding will be entitled to reimbursement from the non-prevailing party or parties for all reasonable costs and expenses, including attorneys' fees in connection with such judicial proceeding.

iii. **Specific Enforcement:** This Funding Agreement may be specifically enforced against the Agency or any successor in interest, with the Agency specifically acknowledging that the beneficiaries of the Agency's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. Venue for such action will be proper in Boulder County.

22. NOTICES

All written notices required to be provided by the Parties under the terms of this Funding Agreement will be in writing, signed by a person duly authorized to provide such notice, and will be deemed given when sent by (i) first class registered or certified mail, return receipt requested, (ii) facsimile transmission, or (iii) electronic mail, read receipt requested, to the parties hereto at the addresses set forth in **Exhibit B**, or to such other place as a party may from time to time designate in writing. All notices will be deemed sufficient (a) upon receipt after dispatch by

registered or certified mail, (b) upon confirmation of receipt when transmitted by facsimile transmission, or (c) upon confirmation of receipt when transmitted by electronic mail. Any notice party will provide current facsimile numbers and email addresses upon request.

23. RIGHT OF FIRST REFUSAL

During the term of this Funding Agreement, except for the conveyance of the Property by the Agency to the Project Partner or the City of Boulder, Colorado (“City”) pursuant to a similar right of first refusal, before the Project Partner, may sell the Property to a third party, the Agency will first cause the Project Partner to offer the Property to the County following the procedures set forth in this paragraph. The County will have thirty (30) days following the date the Project Partner first presents the County such offer to decide whether to try to negotiate an agreement for the purchase of the Property from the Project Partner. If the County desires to try to negotiate such an agreement, the County will, within said thirty (30) day period, deliver to the Project Partner written notice thereof. Promptly thereafter, the Parties will commence good faith negotiations exclusively with each other for a period not to exceed 120 days after the date the County gives the requisite notice to the Project Partner. If the Project Partner does not receive said notice within said thirty (30) day period, or if the Project Partner receives said notice within said period but the Parties do not enter into a legally binding, written agreement for the purchase and sale of the Property within said 120 day period, the Project Partner will be free to enter into an agreement with a third party on terms (considered as a whole) no more favorable to the third party than the Project Partner offered to the County.

Notwithstanding the foregoing, the right of first refusal granted herein is and will remain subordinate in all respects to: (i) the right of first refusal in favor of the Agency pursuant to that certain Right of First Refusal Agreement; and (ii) the right of first refusal in favor of the City pursuant to that certain Permanently Affordable Rental Housing Covenant.

24. GOVERNMENTAL IMMUNITY

Nothing in this Funding Agreement will be construed in any way to be a waiver by the County of its immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

25. GENERAL PROVISIONS

A. Assignment: Neither Party will assign, sublet, or transfer its interest in this Funding Agreement without the written consent of the other. Upon receipt of a written request from the Agency, the Board of Boulder County Commissioners’ Deputy (or his or her designee) will have the authority to approve an absolute assignment of all of the Agency’s rights and obligations under this Funding Agreement to another agency eligible for Worthy Cause, such as a nonprofit organization, so long as the assignee provides the County adequate written assurance that it accepts the assignment and can and will satisfy all obligations of the Agency regarding the Program. The County’s consent to the aforementioned assignment will not be unreasonably withheld or delayed. Notwithstanding the foregoing, at the time the Agency transfers title of the Property to a Project Partner as contemplated in Section 3(C)(iv), then without any further action required by the Agency, the Agency will be deemed to have delegated its obligations under this

Funding Agreement to the Project Partner to the extent necessary to complete the Project, in which case Agency will (1) cause Project Partner to perform the delegated obligations, and (2) remain liable for all such obligations.

B. Complete Agreement, Binding Effect: This Funding Agreement represents the complete agreement between the Parties hereto and will be fully binding upon the successors, heirs, and assigns of the Parties, if any, during the term hereof. This Funding Agreement supersedes, as of the Effective Date, any and all prior agreements between the Parties relating to the subject matter of this Funding Agreement, whether written or oral or partly written and partly oral.

C. Captions: The captions and headings in this Funding Agreement are for convenience of reference only, and will not be used to interpret, define, or limit its provisions.

D. Counterparts: This Funding Agreement may be executed in multiple identical original counterparts, all of which will constitute one agreement.

E. Indemnification: The Agency will defend, indemnify, save, and hold harmless the County and its employees and agents against any and all losses, claims, suits, judgments, or liabilities incurred as a result of any act or omission by the Agency, or its employees, agents, volunteers, subcontracts, or assignees pursuant to the terms of this Funding Agreement. The Agency will pay all costs and reasonable attorney's fees, if any, incurred by the County as a result of any such claims or suits, provided that the Agency will have the right to defend the interests of the County with counsel selected by the Agency reasonably acceptable to the County. In the alternative, if the County is obliged to defend such claims or suits, the time, if any, of the attorneys and paralegals in the Boulder County Attorney's Office spent on any such claims or suits will be paid for by the Agency in accordance with the current hourly market rates in Boulder County for legal services at the time of such legal defense for submission of litigation billing and charges in court cases.

F. Jurisdiction and Venue: All suits, actions, or proceedings related to this Funding Agreement will be held in the State of Colorado and exclusive venue will be in the County of Boulder.

G. Governing Law: The laws of the State of Colorado will govern the interpretation and enforcement of this Funding Agreement.

H. Amendment: No amendments or modifications will be made to this Funding Agreement unless it is in writing and signed by both Parties.

I. Severability: In the event it is determined by a final, non-appealable order of a court of competent jurisdiction that any provision of this Funding Agreement or any other Funding Document is invalid, illegal, or unenforceable, the remaining provisions will survive and their validity, legality or unenforceability will not in any way be affected or impaired thereby, and the Agency and the County agree they will take all such actions as are necessary

and reasonable to achieve, to the greatest degree and for the longest possible term, the intent of the affected provisions.

J. No Third-Party Beneficiary: The enforcement of the terms and conditions of this Funding Agreement and all rights of action relating to such enforcement will be strictly reserved to the County and the Agency, and nothing contained in this Funding Agreement will give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties to this Funding Agreement that any person receiving services or benefits under this Funding Agreement will be deemed an incidental beneficiary only.

K. No Waiver: No failure on the part of any of the Parties to exercise, and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Funding Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or remedy under this Funding Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.

L. CORA Disclosure: To the extent not prohibited by federal law, this Funding Agreement is subject to public release through the Colorado Open Records Act (CORA), CRS §24-72-101, et seq. Any related documentation, records, and communications may also be subject to public release under CORA.

M. Non-Discrimination: Neither the Agency, nor any Project Partner, as applicable, will discriminate on the basis of race, creed, color, gender, gender identity, age, marital status, national origin, disability or familial status, religion, sexual orientation, genetic information, or any other status protected by applicable federal, state, or local law in the performance of its obligations hereunder.

N. Safe Condition: The Agency will, or will cause the Project Partner to, as applicable, maintain the Property in good and safe condition in all respects, and in full compliance with all applicable laws, ordinances, rules, and regulations of any governmental authority with jurisdiction over matters concerning the Property.

O. Controlling Authority: The Agency will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Funding Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.

P. No Joint Venture: Nothing in this Funding Agreement will be deemed to create an agency, partnership, joint venture or employment relationship between the Parties.

Q. Electronic Signatures and Electronic Records: Each of the Parties consents to the use of electronic signatures by the other Party. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by any of Parties in the manner specified by such signing Party. The Parties agree not to deny the legal effect or enforceability of

the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

26. EARLY TERMINATION BY AGENCY

The Agency may terminate this Funding Agreement at any time by giving the County written notice of its intention to do so. In the event that the Agency chooses to exercise this option, the Agency must repay to the County the full Award Amount plus an additional 5% interest. Upon repayment of the Award Amount and interest, this Funding Agreement will immediately terminate. Upon termination, the County will release any security documents that the County recorded against the Property pursuant to this Funding Agreement.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Funding Agreement to be duly executed as of the Effective Date.

**THE HOUSING AUTHORITY OF THE CITY OF
BOULDER, COLORADO, D/B/A BOULDER
HOUSING PARTNERS**, a Colorado housing authority

By:

Name: Jeremy Durham

Title: Executive Director

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

By: Claire Levy
Name: Claire Levy
Title: Chair of the Board of County Commissioners

Attest: Mark A. Sluz
Natalie K. Springett
Clerk to the Board

Date: 10/4/2023

EXHIBIT A

LEGAL PROPERTY DESCRIPTION

Lot 1, Rally Subdivision, according to the plat thereof recorded May 16, 2023 at Reception No. 04007398, County of Boulder, State of Colorado.

Also known by street and number as 2727 29TH STREET, BOULDER, CO 80301.

EXHIBIT B

I. PURPOSE OF FUNDING AGREEMENT

The County has awarded the HOUSING AUTHORITY OF THE CITY OF BOULDER, D/B/A BOULDER HOUSING PARTNERS, (BHP) with \$700,000 in Worthy Cause Funds for construction of 100 units of permanently affordable housing.

II. DESCRIPTION OF THE PROJECT

The 2727 29th Street project will consist of 100 units of permanently affordable housing situated at the corner of 29th and Bluff Street in Boulder.

The project consists of 24 studios, 62 one-bedroom units, and 14 two-bedroom units all for households earning at or less than 60% of Area Median Income. The 2727 29th Street project will provide \$785,000 in annual rent burden relief to Boulder households. BHP will provide project-based vouchers as well as applying for supportive project-based vouchers through the Colorado Department of Housing.

The 1.86-acre infill site is well located with easy access to the Goose Creek multi-use path, high-frequency transit stops along 28th and Valmont, as well as grocery stores and neighborhood serving retail. The redevelopment of the site from the existing fitness center will also help to continue the transformation of the 28th and 30th Street corridors into mixed-use, walkable neighborhoods.

The project will consist of three buildings clad in brick and fiber-cement panels served by common stairwells that have been designed to provide easy access to units. Units will all feature individual private balconies or walk-out stoops, and the community will include a central courtyard gathering space. Additionally, there will be a small leasing office as well as a community room with kitchenette.

III. DESCRIPTION OF AGENCY'S MISSION

Boulder Housing Partners mission is to provide quality, affordable homes and foster thriving Boulder communities. BHP's core beliefs:

- Boulder Housing Partners believes in the power of having a home.
- Boulder Housing Partners believes in opportunity for all.
- Boulder Housing Partners celebrates our diversity.
- Boulder Housing Partners believes our work is one part of a broader solution to a thriving community.
- Boulder Housing Partners believes in keeping our impact on the environment small.
- Boulder Housing Partners believes in working as one team.

IV. DESCRIPTION OF THE PROGRAM

The Program includes building, acquiring, owning and managing affordable housing sites, where a property manager and 24-hour maintenance hotline is available for all communities and residents. At the Agency's sites serving families, cradle-to-career programming is offered to assist all children in developing to their full potential through partnerships with families and community organizations. The Agency also partners with community organizations to preserve or enhance the quality of life for work-abled adults, seniors, and people with disabilities in the following priority areas: housing stability, economic stability, education, health and wellness, and community life. Through the Resident Services Program, the Agency employs

service coordinators to help residents navigate services in the community and bring services to the housing sites through strong community partnerships.

V. SCOPE OF SERVICES

As a material inducement for the County's award of the Worthy Cause Funds to the Agency, the Agency will provide the following human services to residents of Boulder County.

- BHP believes that providing safe, affordable housing is critical to the health, stability, and well-being of our community. Housing costs and availability have reached crisis levels in Boulder and Boulder County, and BHP believes there has never been a more important time to provide affordable housing than now.
 - Affordable rental housing: BHP owns and operates a portfolio of over 1,500 permanently affordable rental units in the City of Boulder.
 - Housing Choice Voucher Program: BHP administers over 1,350 Housing Choice Vouchers.
 - Resident Services Program: BHP provides resident services at many of our communities with a focus on resident stability, economic resiliency, and community strengthening.

VI. PROPERTY VALUE: \$8,800,000 (as is, undeveloped)

VII. NOTICE

Notices will be sent to the addresses below:

For the County: Boulder County Community Services
P.O. Box 471
Boulder, CO 80306
Attn: Worthy Cause

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

For the Grantor: Rally Flats LLLP
c/o Boulder Housing Partners
4800 North Broadway
Boulder, Colorado 80304
Attn: Executive Director

With a copy in any event to: c/o RBC Community Investments, LLC
600 Superior Avenue
Suite 2300
Cleveland, Ohio 44114
Attention: President and General Counsel

EXHIBIT C

After recording, return original to:
Boulder County Attorney's Office
P.O. Box 471
Boulder, Colorado 80306
Attention: Worthy Cause Attorney

COLLATERAL ASSIGNMENT OF NOTE AND DEED OF TRUST

(Rally Flats – 2022 Worthy Cause Funds)

THIS COLLATERAL ASSIGNMENT OF NOTE AND DEED OF TRUST (this "Assignment"), dated _____, 2023, is made by HOUSING AUTHORITY OF THE CITY OF BOULDER, COLORADO d/b/a Boulder Housing Partners, a Colorado municipal housing authority ("BHP"), whose address is 4800 North Broadway, Boulder, Colorado 80304, in favor of the COUNTY OF BOULDER, COLORADO, a body corporate and politic (the "County"), whose address is P.O. Box 471, Boulder, CO 80306.

Recitals

1. Rally Flats LLLP, a Colorado limited liability limited partnership (the "Property Owner") executed a Promissory Note dated on or about the date of this Assignment in the principal amount of \$700,000.00 payable to BHP (the "Note").
2. The Note is secured by the Deed of Trust to Public Trustee, Security Agreement, Financing Statement, and Fixture Filing, dated on or about the same date as the Note, from the Property Owner for the benefit of BHP recorded in the Office of the Clerk and Recorder of Boulder County, Colorado at Reception No. _____ (the "Deed of Trust"), which encumbers the real property and improvements described on Exhibit A (the "Property").
3. On or about the date of this Assignment, BHP and the County entered into a Boulder County Worthy Cause Funding Agreement with BHP (the "Worthy Cause Agreement").
4. BHP now desires to collaterally assign the Note and Deed of Trust to the County to secure performance of the obligations set forth in the Worthy Cause Agreement.

Assignment

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, BHP, subject to the limitations set forth below, as collateral and security for BHP's obligations under the terms of the Worthy Cause Agreement, hereby grants, bargains, sells, conveys, assigns, transfers and sets over unto the County all of BHP's rights in the Note and the Deed of Trust, together with all monies now owing or that may hereafter become due or

owing with respect thereto, and the full benefit of all the powers and all the covenants and provisos therein contained, and all assignable rights of BHP in and to any and all title insurance policies insuring the lien of the Deed of Trust.

TO HAVE AND TO HOLD the Note and the Deed of Trust, together with the above described interest in the Property, subject to the terms contained in the Note and the Deed of Trust, and the Worthy Cause Agreement, unto County forever.

BHP represents and warrants that there have been no amendments or modifications, either oral or written, to the Note or Deed of Trust, and that none of the Property has been released from the lien of the Deed of Trust. The Deed of Trust shall be junior to any deed of trust granted by the Property Owner in favor of the Public Trustee of the Boulder County, Colorado (the "Public Trustee") to secure a construction and permanent loan (the "Mortgage Loan") with ANB Bank, a Colorado banking corporation, its successor or assigns (the "Mortgage Lender"). County agrees to execute and deliver a subordination agreement and any other documents or instruments reasonably requested by BHP and Mortgage Lender in connection with the Mortgage Loan.

Upon the occurrence of an Event of Default (as defined in the Worthy Cause Agreement and subject to the applicable notice and cure period) under the Worthy Cause Agreement, BHP covenants and agrees to do all things reasonably necessary to give effect to the intent of this Assignment, including but not limited to executing any other or further documents necessary or reasonably requested to protect the interest of County or confirm the existence of this Assignment and, if necessary, to join with County, at County's expense, in asserting any claims against any makers under the Note or Deed of Trust, and to remit any proceeds collected thereafter on this Note and Deed of Trust to County. County shall have no right whatsoever to exercise any of its rights under this Assignment until there is an Event of Default that continues beyond the applicable notice and cure periods under the Worthy Cause Agreement.

This is a collateral assignment as security for performance of the obligations set forth in the Worthy Cause Agreement. Notwithstanding anything to the contrary in this Assignment, so long as there is no Event of Default continuing under the Worthy Cause Agreement, BHP shall be entitled to retain all payments received in connection with the Note and Deed of Trust. Upon satisfaction in full of the Note, this Assignment shall be of no further force or effect, and County shall record a termination of this Assignment in the Office of the Clerk and Recorder of Boulder County, Colorado. If the Note is satisfied in full prior to the expiration of the term of the Worthy Cause Agreement, BHP must provide the County with adequate substitute collateral securing the performance under the Worthy Cause Agreement, as set forth in the Worthy Cause Agreement, prior to the County releasing or terminating its interest under this Assignment.

Notwithstanding anything in this Assignment to the contrary, any other members, owners, or partners of the Property Owner shall have the right, but not the obligation, to cure Defaults (as defined in the Worthy Cause Agreement and subject to the applicable notice and cure period) of BHP hereunder, and County hereby agrees to accept any cure of any Default (as defined in the Worthy Cause Agreement and subject to the applicable notice and cure period) made or tendered by one or more of Property Owner's members, owners, or partners on the same basis as if made or tendered by BHP. Copies of all notices which are sent to BHP hereunder shall also be sent to each of the other members, owners, and partners of the Property Owner pursuant to the notice

provisions of the Property Owner's partnership agreement as amended from time to time. BHP shall provide this notice information to County upon the County's request.

This assignment and the covenants contained herein shall be recorded in the Office of the Clerk and Recorder of Boulder County, Colorado and inure to the benefit and be binding upon the successors and assigns of the respective parties hereto.

[The balance of this page is intentionally left blank.]

EXECUTED as of the date first set forth above.

**Housing Authority of the City of Boulder, Colorado
d/b/a Boulder Housing Partners, a body corporate and
politic**

By: _____

Name: Jeremy Durham

Title: Executive Director

STATE OF COLORADO)

) ss:

COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Jeremy Durham as Executive Director of The Housing Authority of the City of Boulder, Colorado.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION
(Collateral Assignment
of Note & Deed of Trust)

Lot 1, Rally Subdivision, according to the plat thereof recorded May 16, 2023 at Reception No. 04007398, County of Boulder, State of Colorado.

A SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the “Agreement”) is made and entered into as of the ___ day of September (the “Effective Date”) by and among **RALLY FLATS LLLP**, a Colorado limited liability limited partnership (the “Borrower”), **COUNTY OF BOULDER, STATE OF COLORADO**, a body corporate and politic (“County”), and **ANB BANK**, a Colorado corporation (the “Bank”).

RECITALS

A. Borrower is the owner of that certain real property located in Boulder County, Colorado, at 2727 29th Street, Boulder, Colorado which is legally described on **Exhibit A**, attached hereto and incorporated herein by reference (the “Property”), upon which Borrower intends to construct a residential project consisting of 100 affordable housing units (the “Project”).

B. As of the date hereof, Borrower received a loan (the “Loan”) from **HOUSING AUTHORITY OF CITY OF BOULDER, COLORADO**, a body corporate and politic dba Boulder Housing Partners (“BHP”). BHP obtained the funds from which it made the Loan to Borrower pursuant to a Boulder Worthy Cause Funding Agreement, by and between County and BHP (“Subordinate Funding Agreement”). The Loan, and all indebtedness and other obligations associated therewith, whether now existing or hereafter arising and relating to funds from County for the Project, is collectively referred to herein as the “Subordinate Debt.”

C. Pursuant to that certain Collateral Assignment of Note and Deed of Trust, dated the date hereof (the “Assignment”), BHP has assigned and transferred to County all of BHP’s right, title, and interest in and to the Loan and the corresponding Subordinate Debt, together with all of the other Subordinate Loan Documents (as defined below).

D. The Loan is evidenced by a Promissory Note (BHP Rally Flats / Worthy Cause Loan), dated the date hereof, and payable to County, as assignee of BHP (the “Subordinate Note”), in the stated principal amount of \$700,000, which is secured by a Deed of Trust to Public Trustee, Security Agreement, Financing Statement and Fixture Filing (BHP Rally Flats / Worthy Cause Loan) (the “Subordinate Deed of Trust”) of even date with the Subordinate Note, encumbering the Property which Subordinate Deed of Trust was recorded in the Records on _____, 2023 at Reception No. _____. The Subordinate Note, Subordinate Funding Agreement, Subordinate Deed of Trust, and Assignment, and all other documents evidencing or securing the Loan, are hereafter referred to as the “Subordinate Loan Documents”).

E. Of even date herewith, the Bank is making two loans to Borrower in the aggregate, maximum principal amount of \$33,000,000 (collectively, the “Bank Loan”), which Bank Loan is evidenced by the following: (i) a Promissory Note (Tax-Exempt), dated the date hereof, in the maximum principal amount of \$31,000,000.00 (the “Tax-Exempt Note”), payable to the order of the Bank (as assignee of the Colorado Housing and Finance Authority, referred to herein as the “Authority”); and (ii) a Promissory Note (Taxable), dated the date hereof, in the maximum principal amount of \$2,000,000.00 (the “Taxable Note”), payable to the order of the Bank

(collectively, the Tax-Exempt Note and the Taxable Note referred to herein in the aggregate as the "Bank Note"). The Bank Note is payable on such terms as set forth in the following documents: (1) that certain Financing Agreement, dated as of September 1, 2023 (the "Financing Agreement"), by and among the Authority, the Bank, and Borrower, pursuant to which the Authority shall issue its not to exceed \$31,000,000.00 Multifamily Housing Revenue Bonds (Rally Flats Apartments Project) Series 2023, to be issued as a single bond, the proceeds of which will be loaned to Borrower, as evidenced by the Tax-Exempt Note; and (2) that certain Continuing Covenant Agreement, dated the date hereof (the "CCA"), by and between the Bank and Borrower (collectively, the Financing Agreement and the CCA referred to herein in the aggregate as the "Bank Loan Agreement"). The Bank Loan and all other obligations of Borrower to the Bank under the Bank Loan Documents (as defined below), are secured by a Deed of Trust with Security Agreement and Fixture Filing (the "Bank Deed of Trust"), creating a first deed of trust lien and security interest on the Property and certain other collateral (collectively, the Bank Deed of Trust together with all other documents securing the Bank Loan, the "Security Instruments," and the Security Instruments together with all documents evidencing the Bank Loan, including the Bank Note and the Bank Loan Agreement, the "Bank Loan Documents").

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

AGREEMENT

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.** County hereby subordinates in all respects whatsoever the Subordinate Loan Documents, as applicable, along with any and all other of County's 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 and all advances made thereunder. The Bank may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Bank Loan Documents without the necessity of obtaining the consent of or providing Notice to the County, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, the Bank may not modify any provision of the Bank Loan Documents that increases the Bank Loan, except for increases in the Bank Loan that result from advances made by the Bank to protect the security or lien priority of Bank under the Bank Loan Documents or to cure defaults under the Subordinate Loan Documents. The County further agrees to subordinate to any new mortgage debt which is for the sole purpose of refinancing all or any part of the Bank Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) and, in the event of such new mortgage debt, the County shall execute and deliver to the Bank a new subordination agreement on the same terms and conditions as this Subordination Agreement.

2. **Subordination of Right, Title, and Interest of County in the Property.** All right, title and interest of 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.** County shall not receive, or take action to collect or enforce, payment from Borrower, if required by the Subordinate Loan Documents, and Borrower will not make payment to County, of any amounts outstanding under the Subordinate Debt or any part thereof; except that County may receive, and Borrower can make payments from its available cash flow in such priority as more fully set forth in Borrower's partnership agreement, as long as, but only in the event that, no event of default (after lapse of any applicable notice and cure period) then exists with respect to the Bank Loan Documents ("Event of Default"). Upon the occurrence of an Event of Default, County shall not, without the prior written consent of the Bank, receive or take any action to collect or enforce, payment of the Subordinate Debt 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 County in violation of the immediately preceding sentence shall promptly be delivered to the Bank for application to the Bank Note.

4. **Intentionally Deleted.**

5. **Release of the Subordinate Loan Documents.** Upon an Event of Default and the Bank's election to foreclose the Bank Deed of Trust or take a deed in lieu thereof, County shall promptly execute and deliver to the Bank or any third-party successful bidder at foreclosure sale such instruments as may reasonably be necessary to terminate or release 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 the release required under this Section 5 within 10 business days after request thereof by the Bank, such release will be automatic with no further action necessary on the part of the Bank or County; provided that the Bank may then execute in the name of and on behalf of County, as County's attorney in fact, a release of the Subordinate Deed of Trust.

6. **Default.** Upon the occurrence of any breach or default by Borrower under the Bank Loan Documents, the Bank shall provide to County a copy of any notice of default provided to Borrower, and County shall have the right, but not the obligation, to effect any cure upon the same terms as Borrower under the Bank Loan Documents, which the Bank shall accept upon the same terms as if tendered by Borrower. Upon the occurrence of a default under the Subordinate Debt, County agrees to provide to the Bank a copy of any notice of default provided to Borrower.

7. **Reserved.**

8. **Reserved.**

9. **Bank Priority.** In the event of bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the Property, 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 Debt and which would be payable or deliverable to County in the absence of the provisions of this Agreement shall be paid and delivered directly to the Bank for application by the Bank to the Bank Note, until full payment of the Bank Note with the excess, if any, to be paid to County, regardless

of whether County or the Bank or all file a claim on behalf of the Subordinate Debt in any such proceeding. The Bank is hereby irrevocably appointed attorney-in-fact for County with full power to act in the place and stead of County in all matters relating to or affecting the Subordinate Debt, including the right to make, present, file, and vote such proofs of claim against Borrower on account of all or any part of the Subordinate Debt as the Bank may deem advisable and to receive and collect any and all payments (“Payments”) made thereon and to apply the same on account of the Bank Note. County will execute and deliver to the Bank such instruments as may be reasonably required by the Bank to enforce the Subordinate Debt, to effectuate the aforesaid power of attorney and to effect collection of any and all Payments which may be made at any time on account thereof.

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

11. **Condemnation Awards and Insurance Proceeds.** Until repayment in full of the Bank Loan, County further covenants and agrees that any and all rights of County under the Subordinate Deed of Trust, including without limitation any and all rights of County 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 Note or the Bank Deed of Trust any balance remains, then such excess shall be made payable to the joint order of Borrower and County as their interests may appear under the Subordinate Deed of Trust.

12. **Pay Over of Monies.** In the event that County receives any payment or property on or under the Subordinate Debt in violation of the terms of this Agreement, such payments shall be held in trust by County and County will forthwith pay over or deliver the same to the Bank to be held by the Bank as cash collateral securing the Bank Loan.

13. **Undertakings Unaffected.** 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 County at any time of any payments made under the Bank Note or with respect to any collateral securing the Bank Note.

14. **Limitation on Transfer.** 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 Debt, 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.

15. **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.

16. **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 County to subordinate to the Bank Loan shall be limited to the principal amount of the Bank Loan, together with interest, default interest, fees and charges that may be incurred in connection with the Bank Loan, and also to any amounts which may be advanced by the Bank in connection with the Property, 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.

17. **Successors and Assigns.** This Agreement is binding not only upon 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 but shall not inure to the benefit of or be enforceable by any other party or subordinate the Subordinate Loan Documents to any claim other than the Bank Note.

18. **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.

19. **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.

20. **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: Rally Flats LLLP
c/o Boulder Housing Partners
4800 North Broadway
Boulder, CO 80304
Attention: Executive Director

with a copy to: Bryan Cave Leighton Paisner LLP
1801 13th Street, Suite 300
Boulder, Colorado 80302
Attention: Ben Doyle, Esq.

if to the Bank: ANB Bank
1360 Walnut Street

Boulder, CO 80302
Attn: David E. Wright, Community Bank President

if to the County: Boulder County Community Services
P.O. Box 471
Boulder, CO 80306
Attn: Worthy Cause

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

21. **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.

22. **Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement.

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

COUNTY OF BOULDER, STATE OF COLORADO

By Claire Levy
Claire Levy
Chair of the Board of County Commissioners

ATTEST:
M. R. Bachman

APPROVED AS TO FORM:

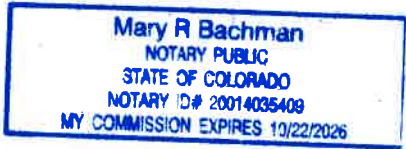
County Attorney's Office

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 4th day of October, 2023 by Claire Levy in her capacity as the Chair of the Board of Commissioners of County of Boulder, State of Colorado.

Witness my hand and official seal.

[SEAL]



Mary R. Bachman
Notary Public

My Commission Expires:
10/22/2026

RALLY FLATS LLLP, a Colorado limited liability limited partnership

By: Rally Flats GP LLC, a Colorado limited liability company, its general partner

By: Housing Authority of City of Boulder, Colorado, its manager

By: _____
Name: Jeremy Durham
Its: Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this ____ day of September 2023, by Jeremy Durham, in his capacity as the Executive Director of the Housing Authority of City of Boulder, Colorado, which is the manager of Rally Flats GP LLC, a Colorado limited liability company, which is the general partner of Rally Flats LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOT 1, RALLY SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED MAY 16, 2023 UNDER RECEPTION NO. 04007398, COUNTY OF BOULDER, STATE OF COLORADO.