

**CITY OF BOULDER
GRANT FUNDING AGREEMENT
FOR CAPITAL PROJECT FUNDING**

THIS GRANT FUNDING AGREEMENT FOR CAPITAL PROJECT FUNDING (“Agreement”) is made to be effective on this ____ day of _____ 20__ (“Effective Date”) by and between the City of Boulder, a Colorado home rule city, (the “City”) and [non-profit entity legal name], a Colorado nonprofit organization (“Grantee”). The City and Grantee may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

A. Boulder voters approved Ballot Measure 2I pursuant to Ordinance 8476 at the general municipal coordinated election held on Tuesday, November 2, 2021;

B. Ballot Measure 2I extended the Community, Culture, Resilience and Safety (“CCRS”) Tax of 0.3 percent from January 1, 2022, through December 31, 2036. Among other things, Ballot Measure 2I provides for 10 percent of the CCRS Tax to fund a grant pool for non-profit organization capital projects that serve city of Boulder community members;

C. Grantee is a Colorado nonprofit organization and provides Services (defined below) as described in the Scope of Work, see **Attachment B** to this Agreement;

D. Grantee intends to carry out the Project (defined below), as described in **Attachment B** to further Grantee’s ability to provide the Services; and

E. Grantee applied for a grant award through the City’s CCRS Tax Grant Program Capital Project Funding application process and the City has awarded a grant of [AMOUNT] (“Grant Award”) to Grantee.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants included in this Agreement, and for good and valuable consideration, the Parties agree as follows:

1. Definitions. The Parties agree that the terms below are defined as follows:

“Project” means the capital [construction/renovation/improvements] for Grantee described more fully in **Attachment B** of this Agreement.

“Property” means the real property [on/for] which the Project will take place, the legal description of which is set forth in **Attachment A** and anything constructed or erected with a fixed location on the ground above grades (“structures”) and/or improvements to structures, including those resulting from the Project.

“Services” means the core Services to be performed by the organization as set forth in detail in **Attachment B** of this Agreement.

2. Grant Award. The City will provide Grantee with the Grant Award of [AMOUNT] upon execution of this Agreement and receipt of an executed and recorded Deed of Trust and Declaration of Covenant, Conditions and Restrictions (“Covenant”).

3. Use of Disbursement. Grantee will use the Grant Award solely for completion of the Project.

4. Reporting. Grantee shall submit quarterly and annual reports in accordance with the details described in **Attachment B**.

a. Quarterly reports shall be due January 31, April 30, July 31 and October 31 until the Project is complete and the property is opened/re-opened to the public, if applicable. A report will be due for the quarter in which the project was completed. If any reporting date falls on a weekend or holiday, the report will be due on the next business day.

b. Annual reports shall be due the first January 31 following Project completion. If the reporting date falls on a weekend or holiday, the report will be due on the next business day.

5. Term; Schedule; Unexpended Awards. The term of this Agreement shall commence as of the Effective Date and shall terminate on [month] [day], [year]. In the event there are unexpended Grant Award funds at the expiration of this Agreement, Grantee shall notify the City prior to the end of the termination of this Agreement. With prior written approval from the City and in the City’s sole discretion, Grantee may request an extension to expend all funds for its capital improvement project. Grantee agrees that, if no extension is granted, it will return any unexpended Grant Award funds not approved for reallocation, as directed by the City, within 45 days of expiration of this Agreement.

6. Scope of Work and Budget and Timeline. Grantee agrees to abide by all the terms and conditions and any written instructions of this Agreement, the Scope of Work (**Attachment B**) as proposed by Grantee and agreed upon by the City, and the Budget and Timeline (**Attachment C**). Grantee amendments to the Budget and Timeline, Attachment C, may be submitted in writing to the City and approved by the City in writing. All other changes must adhere to paragraph 29, Amendment in Writing.

7. Project Managers. The Project manager for the City shall be the city manager or his or her designee. The Grantee’s Project manager shall be the President/CEO or his or her designee.

8. Notices. Any notice provided pursuant to this Agreement shall be in writing to the Parties at the addresses set forth below and shall be deemed given (i) if by hand delivery, upon receipt thereof; (ii) three days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested; or (iii) one day after deposit with a nationally-recognized

overnight courier, specifying overnight priority delivery. Either Party may change its address for the purposes of this Agreement at any time by giving written notice of such change to the other Party.

Grantee:

[name]

[title]

[non-profit entity]

[non-profit entity address]

City:

Finance Department

City of Boulder

P.O. Box 791

Boulder, CO 80306

with a copy to:

City Manager

City of Boulder

P.O. Box 791

Boulder, CO 80306

9. Records.

- a. Grantee shall maintain financial records, accounting, and purchasing information, and books and records for the Project. The information and books and records shall comply with generally accepted accounting practices and be available for review by the City at any time, upon reasonable advance request. An advance reasonable request shall be 48 hours' notice or such other time period as the Parties mutually agree. The City may make electronic or photocopies of any such records which are not confidential, at the City's expense. All documents related to the Project which are delivered by Grantee to the City are public records and shall be retained and provided by the City as required by law, including the Colorado Open Records Act.
- b. All costs shall be supported by properly executed time records, invoices, contracts vouchers, orders, and/or any other accounting documents pertaining in whole or in part to this Agreement and all such documents shall be clearly identified and accessible.
- c. At the City's request, Grantee shall provide additional information regarding any specific expenditure or portion of Grantee's contribution towards the total Project cost.

- d. Grantee shall also furnish to the City, at such time and in such forms as the City may require, such statements, records reports, data, and information as the City may request.

10. Use and Maintenance.

- a. Grantee agrees to complete the Project, open or re-open the Property to the public, if applicable and maintain the Property in a professional and efficient manner. Grantee will exercise reasonable care to prevent loss, damage or theft of property acquired in whole or in part with the Grant Award pursuant to this Agreement. Grantee shall maintain the Property in good, safe and usable condition in all respects except for normal wear and tear. Maintenance shall include but not be limited to the routine watering, weeding, mulching, trimming, mowing, and pruning of plant material, and the routine cleaning, oiling, repairing, painting, and refinishing of the building, signs, equipment, or other structures.
- b. Grantee agrees to use the Property for the Services. Grantee may charge class fees for programming as applicable. Grantee may rent all or part of the Property to third parties for short-term uses not related to Grantee's mission, including for meetings, conferences, parties, and events. Grantee agrees to conduct its business in compliance with all statutes, ordinances, land use requirements, rules, orders, regulations and requirements of all federal, state, county and city governments.

11. Security or use covenants.

- a. For a period of [number] years after the execution of this Agreement, Grantee will complete the project, open or re-open the Property to the public, if applicable, and operate the Property in a manner substantially consistent with the use described in this Agreement. Prior to the disbursement of the amount drawn under the terms of the Agreement, Grantee agrees to execute and record a Covenant, in substantially the same form as attached hereto (**Attachment D**) and execute, record and deliver to the City a non-recourse deed of trust (the "Deed of Trust"), initially granting to the City first security interest in the Property, in substantially the same form as attached hereto (**Attachment E**).
- b. The Deed of Trust shall be first to all liens and encumbrances on the Property now existing or hereinafter created or recorded, provided the aggregate amount thereof shall not exceed [AMOUNT]. The City may agree, upon written request of the Grantee, to subordinate the Deed of Trust to one mortgage in favor of financial institutions or other funding sources providing financing for the Project.

12. Insurance.

a. Minimum Coverages. Grantee agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following minimum coverages:

i. Workers' Compensation and Employers' Liability

State of Colorado: Statutory

ii. General Liability – ISO CG 00001 or equivalent

a. General Aggregate Limit: \$2,000,000

b. Per Occurrence: \$1,000,000

iii. Automobile Liability Limits - ISO form CA0001 (BAP) or equivalent including coverage for owned, non-owned and hired autos ¹

Bodily Injury & Property Damage

Combined Single Limit: \$1,000,000

b. Additional Insurance Requirements.

i. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis.

ii. Where commercially available, **Grantee shall name “the City of Boulder, its elected and appointed officials, directors, officers, employees, agents and volunteers” as additional insureds** as their interest may appear (except for Worker's Compensation and Professional Liability). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability.

iii. **The Certificate Holder shall be identified as: City of Boulder, P.O. Box 791, Boulder, CO 80306.**

iv. All policies of insurance shall be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the City.

v. A Separation of Insureds Clause must be included in general liability policies.

¹ Applicable only if Grantee, its agents, employees, or representatives will be using motor vehicles in Colorado while performing the Services.

- vi. Grantee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At its own expense, Grantee will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the City a new certificate of insurance showing such coverage is in force.
- vii. Grantee's insurance carrier shall possess a minimum A.M. Best's Insurance Guide rating of A-.
- viii. Grantee, or Grantee's insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer's notification to that effect. Grantee shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.
- ix. Grantee is responsible for any damage or loss to its own vehicles or equipment.
- x. The City and Grantee shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
- xi. Grantee and its insurers shall waive subrogation in favor of Additional Insured parties.
- xii. Grantee shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.
- xiii. General Liability coverage shall include a waiver of subrogation.

13. Other Payments Unaffected. The payment(s) under this Agreement will not be in lieu of, reduce, or otherwise affect other payments or support that the City provides or may provide Grantee. Any such payment(s) made by the City shall be subject to a prior appropriation of funds by the Boulder City Council.

14. Termination. In the event of a termination, any funds allocated to the Project and not theretofore distributed to Grantee, shall be retained by the City for reallocation to other purposes, at the sole discretion of the Boulder City Council that are consistent with the Ballot Measure 2I.

- a. Termination for Breach. If either Party materially defaults in the performance of any term of this Agreement (other than by nonpayment) and does not substantially cure such default within 30 days after receiving written notice of

such default, the non-defaulting Party may terminate this Agreement by providing 10 days prior written notice of termination to the defaulting Party. The following actions will be considered a default under the terms of this Agreement and the Deed of Trust:

- i. Grantee files a petition in bankruptcy or makes a general assignment for the benefit of its creditors;
- ii. Grantee fails to use the disbursements for the creation of the Project as required by this Agreement;
- iii. Grantee fails to comply in all material respects with the other material terms of this Agreement; and
- iv. Grantee sells, assigns, or otherwise conveys, pledges or alienates any interest in the Property without the prior written consent of the City. Such consent will not be required for the conveyance of the Property to a wholly owned subsidiary of Grantee. In such an event, Grantee and the subsidiary shall be jointly and severally liable for the conditions of this Agreement.

b. Termination for Convenience. The City may, at any time, terminate this Agreement, in whole or in part, for its own convenience and without cause of any nature by giving the other Party written notice at least seven days in advance of the termination date. The City will not provide additional payments past the termination date and all obligations of the City to the Grantee shall cease upon termination.

15. Inspection. Grantee agrees to give the City permission to visit the Property with 48 hours' notice for the purpose of making inspections pertaining to this Agreement.

16. Payment of Bills. Grantee shall promptly pay all bills for labor and material performed and furnished by others for the purpose of the Project.

17. Laws to be Observed. Grantee shall be cognizant of all federal and state laws and local ordinances and regulations which in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction over the same, and shall defend, at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall defend, protect and indemnify the City against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself, its subcontractors, agents, or employees.

18. Applicable Law; Jurisdiction; Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state court situated in

Boulder County or federal court situated in the City and County of Denver, Colorado, and each Party consents to jurisdiction and venue before such courts.

19. No Arbitration. No dispute between the Parties shall be resolved by binding arbitration before any extra-judicial body or person. Any provision to the contrary shall be null and void.

20. Permits and Licenses. Grantee shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of their services under this Agreement.

21. No Multiple Fiscal Year Obligation. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multiple fiscal year direct or indirect debt or obligation within the meaning of TABOR and notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City’s current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Any failure of a City Council annually to appropriate adequate monies to finance the City’s obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to Grantee of any failure to appropriate such adequate monies.

22. Relationship. The relationship between Grantee and the City is that of an independent grant recipient. Grantee shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth in this Agreement. Grantee shall not be deemed to be, nor shall they represent themselves as, employees, partners, or joint venturers of the City. No employee or officer of the City shall supervise Grantee. Grantee is not entitled to Workers’ Compensation benefits and is obligated to directly pay federal and state income tax on money earned under this Agreement, if any.

23. Indemnification. Grantee agrees to indemnify and save harmless the City against any and all damages to property or injuries to or death of any person or persons arising from its performance of this Agreement, including property and employees or agents of the City and shall defend, indemnify and save harmless the City from any and all claims, demands, suits, actions or proceedings of any kind or nature, including without limitation Worker’s Compensation claims, of or by anyone whomsoever in any way resulting from or arising out of Grantee’s operations in connection with this Agreement, including operations of subcontractors and acts or omissions of employees or agents of Grantee or its subcontractor.

24. Immunity. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of

the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended.

25. Purchasing Procedures. The Parties agree that the Project is not a public project for the purposes of using the City purchasing procedures in Chapter 2-8, "Purchasing Procedures," B.R.C., 1981. The Project shall not be subject to the requirements of law for city capital improvement projects except as expressly provided for in this Agreement.

26. Entire Agreement. This document constitutes the entire Agreement between the City and Grantee and incorporates all prior verbal and written communications between the Parties concerning the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing.

27. No Assignment. This Agreement may not be assigned by Grantee without the prior written consent of the City. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.

28. No Mechanic's Liens. Grantee agrees that it will not cause or permit any claims in the nature of mechanic's liens for materials or labor placed or used under the terms of this Agreement to be filed or served upon the City; and Grantee hereby guarantees to indemnify and save harmless the City against any and all such claims for liens which may be filed or asserted against any of the work done hereunder.

29. Amendment In Writing. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties.

30. Force Majeure. No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, epidemics, pandemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing Party's reasonable control (collectively, "Force Majeure"). In such an event, however, the delayed Party must promptly provide the other Party notice of the Force Majeure. Grantee shall not be excused from liability for delays or non-performance caused by events or conditions within its control nor for delays or non-performance which it could have foreseen and avoided, prevented or significantly ameliorated by exercising reasonable prudence or diligence, nor for any delays or non-performance caused in whole or in part by Grantee itself.

31. No Third-Party Beneficiaries. The Parties intend to have no third-party beneficiaries under this Agreement. Any person other than the City or Grantee receiving services or benefits under this Agreement is an incidental beneficiary only.

32. No Waiver. No waiver of any breach or default under this Agreement shall be a

waiver of any other or later breach of default.

33. Headings; Recitals; Attachments. The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The Recitals set forth at the beginning of this Agreement, as well as the Attachments referred to throughout this Agreement are hereby incorporated into this Agreement.

34. Authority. Grantor warrants that the individual executing this Agreement is properly authorized to bind (name of entity) to this Agreement.

(Signature block on following page)

SAMPLE

The Parties to this Agreement have caused it to be executed by their authorized officers as of the day and year first above written. This Agreement may be executed in counterparts, each of which shall be original, but all of which together shall constitute a fully binding and executed Agreement.

GRANTEE

By: _____
Title: _____

**CITY OF BOULDER,
a Colorado home rule city**

Nuria Rivera-Vandermyde,
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

**ATTACHMENT A
LEGAL PROPERTY DESCRIPTION**

[LEGAL PROPERTY DESCRIPTION]. COUNTY OF BOULDER, STATE OF COLORADO.

Also known by street and number as **[ADDRESS]**.

SAMPLE

**ATTACHMENT B
SCOPE OF WORK**

I. Project

[Description of the Project]

II. Services

[Description of the core services provided by Grantee]

III. Reporting

[Description of required reports]

SAMPLE

**ATTACHMENT C
PROJECT BUDGET AND TIMELINE**

I. Budget
[Table]

II. Funding Sources
[Table]

II. Timeline
[Table]

SAMPLE

ATTACHMENT D

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

[non-profit entity legal name], a Colorado nonprofit corporation, (“Grantor”), is the owner of the land located at [property address] and more specifically described as [legal property description] (the “Property”). This Declaration of Covenants, Conditions, and Restrictions (“Covenant”) applies to the Property for the benefit of the City of Boulder, a Colorado home rule city, (the “City”), with a mailing address of P.O. Box 791, Boulder, Colorado 80306. The Grantor and the City are collectively referred to herein as the “Parties.”

1. Ballot Measure 2I provides for 10 percent of the Community, Culture, Resilience and Safety Tax to fund a grant pool for non-profit organizations’ capital improvement projects that serve city of Boulder community members.

2. The Grantor has received from the City a grant award of XX (the “Funds”). All of the Funds will be used solely for the completion Grantor’s capital improvement project, [project description, aligning with language in Attachment B] (the “Project”).

3. Grantor will use the Property for at least [number] years after the effective date of this Covenant to provide [service description, aligning with language in Attachment B] to the public, and for such ancillary uses typically associated with the stated purpose. The Grantor reserves the right to charge admission to the Property or rent the Property to third parties for short-term uses not related to Grantor’s mission, including for meetings, conferences, parties and events. Grantor will conduct its business in compliance with all statutes, ordinances, land use requirements, rules, orders, regulations and requirements of all federal, state, county and city governments. This Covenant shall run with the land for the benefit of the City.

4. The City may enforce any breach of this Covenant by specific enforcement and actions at law and in equity, including, without limitation, specific performance, damages, or injunction.

5. This Covenant is intended to benefit the City and applies to the Property, its owners, and successors and assigns.

6. This Covenant will be recorded in the real property records of the Boulder County Clerk and Recorder’s Office, Colorado, to inform and provide notice to subsequent purchasers and owners of the Property of this Covenant which runs with the land.

7. This Covenant shall automatically terminate and be of no further force and effect on the [number] anniversary of the effective date of this agreement.

8. The Parties do not intend to create any future interest in land. If a court of competent jurisdiction finds that this Covenant creates a future interest in land, that interest shall vest, if at all, during the lives of the undersigned plus 20 years and 364 days.

9. The City Manager is authorized to waive or release any or all of the provisions of this Covenant as it pertains to any or all of the Property. Any such waiver or release shall be binding upon the City.

This Covenant shall be effective on this _____ day of _____, 2023 (“Effective Date”).

(Signature block on following page)

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(TD72-8-10) (Mandatory 1-11)

IF THIS FORM IS USED IN A CONSUMER CREDIT TRANSACTION, CONSULT LEGAL COUNSEL.

THIS IS A LEGAL INSTRUMENT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING.

DEED OF TRUST

(Due on Transfer – Strict)

THIS DEED OF TRUST is made this _____ day of _____, 2023, between [non-profit entity legal name] (Borrower), whose address is [non-profit entity address]; and the Public Trustee of the County in which the Property (see § 1) is situated (Trustee); for the benefit of the City of Boulder, a Colorado home rule city (Lender), whose address is PO Box 791, Boulder, Colorado 80302.

Borrower and Lender covenant and agree as follows:

1. Property in Trust. Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the following legally described property located in the County of Boulder, State of Colorado:

[non-profit entity legal property description]

known as No. _____ (Property Address),
Street Address City State Zip

together with all its appurtenances (Property).

2. ~~Note: Other Obligations Secured.~~ This Deed of Trust is given to secure to Lender:

This Deed of Trust is given to secure to Lender those certain obligations of the Borrower set forth in the Grant Funding Agreement dated _____, 2023, recorded at Reception No. _____, by and between Lender and Borrower (the "Grant Agreement") and the Declaration of Covenants, Conditions, and Restrictions by Borrower for the benefit of Lender recorded at Reception No. _____, both recorded in the real property records of Boulder County, Colorado. The initial nominal amount secured by this Deed of Trust is [award amount]; provided, however, that Borrower shall have no payment obligations to Lender and Lender's sole recourse and remedy in the event of breach of Borrower's obligation shall be foreclosure of Lender's security interest in the Property, as hereafter set forth.

~~**2.1.** the repayment of the indebtedness evidenced by Borrower's note (Note) dated _____ in the principal sum of _____ Dollars (U.S. \$ _____), with interest on the unpaid principal balance from _____ until paid, at the rate of _____ percent per annum, with principal and interest payable at _____ or such other place as Lender may designate, in _____ payments of _____ Dollars (U.S. \$ _____), due on the _____ day of each _____ beginning _____; such payments to continue until the entire indebtedness evidenced by said Note is fully paid; however, if not sooner paid, the entire principal amount outstanding and accrued interest thereon shall be due and payable on _____; and Borrower is to pay to Lender a late charge of _____% of any payment not received by Lender within _____ days after payment is due; and Borrower has the right to prepay the principal amount outstanding under said Note, in whole or in part, at any time without penalty except _____;~~

~~**2.2.** the payment of all other sums, with interest thereon at _____% per annum, disbursed by Lender in accordance with this Deed of Trust to protect the security of this Deed of Trust; and~~

~~**2.3.** the performance of the covenants and agreements of Borrower herein contained.~~

3. Title. Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date; and subject to N/A.

~~**4. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.~~

~~**5. Application of Payments.** All payments received by Lender under the terms hereof shall be applied by Lender first in payment of amounts due pursuant to § 23 (Escrow Funds for Taxes and Insurance), then to amounts disbursed by Lender pursuant to § 9 (Protection of Lender's Security), and the balance in accordance with the terms and conditions of the Note.~~

~~**6. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any prior deed of trust and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if~~

62 any, in the manner set out in § 23 (Escrow Funds for Taxes and Insurance) or, if not required to be paid in such manner, by
63 Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make
64 payments otherwise required by this section if Borrower, after notice to Lender, shall in good faith contest such obligation by, or
65 defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or
66 forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as
67 ordered by the court to the registry of the court in which such proceedings are filed.

68 **7. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured
69 against loss by fire or hazards included within the term “extended coverage” in an amount at least equal to the lesser of (a) the
70 insurable value of the Property or (b) an amount sufficient to pay the sums secured by this Deed of Trust as well as any prior
71 encumbrances on the Property. All of the foregoing shall be known as “Property Insurance.”

72 The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen
73 by Borrower subject to Lender’s right to reject the chosen carrier for reasonable cause. All insurance policies and renewals thereof
74 shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at least
75 ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to Lender
76 at or before closing. Lender shall have the right to hold the policies and renewals thereof.

77 In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if
78 not made promptly by Borrower.

79 Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided said restoration or repair is
80 economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not
81 economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the
82 sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if
83 Borrower fails to respond to Lender within 30 days from the date notice is given in accordance with § 16 (Notice) by Lender to
84 Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the
85 insurance proceeds, at Lender’s option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

86 Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in §§ 4
87 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) or change the amount of such installments.
88 Notwithstanding anything herein to the contrary, if under § 18 (Acceleration; Foreclosure; Other Remedies) the Property is
89 acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof
90 resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this
91 Deed of Trust immediately prior to such sale or acquisition.

92 All of the rights of Borrower and Lender hereunder with respect to insurance carriers, insurance policies and insurance proceeds
93 are subject to the rights of any holder of a prior deed of trust with respect to said insurance carriers, policies and proceeds.

94 **8. Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit
95 waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust
96 is on a leasehold. Borrower shall perform all of Borrower’s obligations under any declarations, covenants, by-laws, rules, or other
97 documents governing the use, ownership or occupancy of the Property.

98 **9. Protection of Lender’s Security.** Except when Borrower has exercised Borrower’s rights under § 6 above, if
99 Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or if
100 any action or proceeding is commenced which materially affects Lender’s interest in the Property, then Lender, at Lender’s option,
101 with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is necessary
102 to protect Lender’s interest, including, but not limited to:

- 103 **9.1.** any general or special taxes or ditch or water assessments levied or accruing against the Property;
- 104 **9.2.** the premiums on any insurance necessary to protect any improvements comprising a part of the Property;
- 105 **9.3.** sums due on any prior lien or encumbrance on the Property;
- 106 **9.4.** if the Property is a leasehold or is subject to a lease, all sums due under such lease;
- 107 **9.5.** the reasonable costs and expenses of defending, protecting, and maintaining the Property and Lender’s interest in
108 the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property,
109 receiver’s fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney
110 in the employment of Lender or holder of the certificate of purchase;
- 111 **9.6.** all other costs and expenses allowable by the evidence of debt or this Deed of Trust; and
- 112 **9.7.** such other costs and expenses which may be authorized by a court of competent jurisdiction.

113 Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by
114 law or otherwise to cure any default under said prior encumbrance.

115 Any amounts disbursed by Lender pursuant to this § 9, with interest thereon, shall become additional indebtedness of Borrower
116 secured by this Deed of Trust. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and
117 Lender may bring suit to collect any amounts so disbursed plus interest specified in § 2.2 (Note: Other Obligations Secured). Nothing
118 contained in this § 9 shall require Lender to incur any expense or take any action hereunder.

119 **10. Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided
120 that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender’s
121 interest in the Property.

122 **11. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any
123 condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and
124 shall be paid to Lender as herein provided. However, all of the rights of Borrower and Lender hereunder with respect to such
125 proceeds are subject to the rights of any holder of a prior deed of trust.

126 In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the
127 excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of
128 the award due any prior lien holder (net award) shall be divided between Lender and Borrower, in the same ratio as the amount of
129 the sums secured by this Deed of Trust immediately prior to the date of taking bears to Borrower's equity in the Property
130 immediately prior to the date of taking. Borrower's equity in the Property means the fair market value of the Property less the
131 amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all at the
132 value immediately prior to the date of taking.

133 If the Property is abandoned by Borrower or if, after notice by Lender to Borrower that the condemnor offers to make an
134 award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender
135 is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums
136 secured by this Deed of Trust.

137 Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in §§ 4
138 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) nor change the amount of such installments.

139 ~~**12. Borrower not Released.** Extension of the time for payment or modification of amortization of the sums secured by this
140 Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of
141 the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be
142 required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of
143 the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.~~

144 **13. Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or
145 otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

146 **14. Remedies Cumulative.** Each remedy provided in ~~the Note and~~ this Deed of Trust is distinct from and cumulative to all
147 other rights or remedies under ~~the Note and~~ this Deed of Trust or afforded by law or equity, and may be exercised concurrently,
148 independently or successively.

149 **15. Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein
150 contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject
151 to the provisions of § 24 (Transfer of the Property; Assumption). All covenants and agreements of Borrower shall be joint and
152 several. The captions and headings of the sections in this Deed of Trust are for convenience only and are not to be used to interpret
153 or define the provisions hereof.

154 **16. Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Borrower provided for
155 in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such
156 notice by first class U.S. mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may
157 designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be
158 effective upon (1) delivery to Lender or (2) mailing such notice by first class U.S. mail, to Lender's address stated herein or to
159 such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of
160 Trust shall be deemed to have been given to Borrower or Lender when given in any manner designated herein.

161 **17. Governing Law; Severability.** ~~The Note and this~~ Deed of Trust shall be governed by the law of Colorado. In the
162 event that any provision or clause of this Deed of Trust ~~or the Note~~ conflicts with the law, such conflict shall not affect other
163 provisions of this Deed of Trust ~~or the Note~~ which can be given effect without the conflicting provision, and to this end the
164 provisions of the Deed of Trust ~~and Note~~ are declared to be severable.

165 **18. Acceleration; Foreclosure; Other Remedies.** Except as provided in § 24 (Transfer of the Property; Assumption),
166 upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust ~~or the Grant Agreement or the~~
167 *Declaration of Covenants, Conditions, and Restrictions*, or upon any default in a prior lien upon the Property, (unless Borrower
168 has exercised Borrower's rights under § 6 above), at Lender's option, all of the sums secured by this Deed of Trust, ~~or the~~
169 *Grant Agreement or the Declaration of Covenants, Conditions, and Restrictions*, shall be immediately due and payable (Acceleration). To
170 exercise this option, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all
171 reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust ~~or the Grant Agreement or the~~
172 *Declaration of Covenants, Conditions, and Restrictions* pursuing the remedies provided in this Deed of Trust, ~~or the Grant Agreement, or~~
173 *the Declaration of Covenants, Conditions, and Restrictions*, including, but not limited to, reasonable attorney's fees.

174 If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such notice
175 to Borrower of Borrower's rights as is provided by law. Trustee shall record a copy of such notice and shall cause publication of
176 the legal notice as required by law in a legal newspaper of general circulation in each county in which the Property is situated, and
177 shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such time as may be
178 required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the
179 time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think
180 best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not
181 be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

182 Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale,
183 including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this
184 Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

185 **19. Borrower's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder,
186 the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and
187 interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided
188 by law. Upon such payment, this Deed of Trust *or the Grant Agreement or the Declaration of Covenants, Conditions, and*
189 *Restrictions* and the obligations secured hereby shall remain in full
190 force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

191 **20. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower
192 hereby assigns to Lender the rents of the Property; however, Borrower shall, prior to Acceleration under § 18 (Acceleration;
193 Foreclosure; Other Remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due
194 and payable.

195 Lender or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after Acceleration
196 under § 18 (Acceleration; Foreclosure; Other Remedies), and shall also be so entitled during the time covered by foreclosure
197 proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or
198 insolvency of Borrower or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed
199 by any Court of competent jurisdiction upon ex parte application and without notice; notice being hereby expressly waived.

200 Upon Acceleration under § 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, Lender, in
201 person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property
202 and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first
203 to payment of the costs of preservation and management of the Property, second to payments due upon prior liens, and then to the
204 sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

205 **21. Release.** Upon ~~payment of all sums secured by this the _____ anniversary of the date of this Deed of Trust,~~
206 Lender shall cause Trustee to release this Deed of Trust. *In the event the Trustee or the Lender fails to record documentation*
207 *evidencing such release, this Deed of Trust shall automatically, without further documentation or recordation, terminate and be*
208 *released on the _____ anniversary of the date hereof and shall be of no further force or effect thereafter. Borrower shall pay all*
209 *costs of recordation and shall pay the statutory Trustee's fees. If Lender shall not produce the Note as aforesaid, then Lender,*
210 *upon notice in accordance with § 16 (Notice) from Borrower to Lender, shall obtain, at Lender's expense, a file any lost*
211 *lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.*

212 **22. Waiver of Exemptions.** Borrower hereby waives all right of homestead and any other exemption in the Property under
213 state or federal law presently existing or hereafter enacted.

214 **23. Escrow Funds for Taxes and Insurance.** ~~This § 23 is not applicable if Funds, as defined below, are being paid pursuant~~
215 ~~to a prior encumbrance. Subject to applicable law, Borrower shall pay to Lender, on each day installments of principal and interest are~~
216 ~~payable under the Note, until the Note is paid in full, a sum (herein referred to as "Funds") equal to _____ of the~~
217 ~~yearly taxes and assessments which may attain priority over this Deed of Trust, plus _____ of yearly premium installments for~~
218 ~~Property Insurance, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and~~
219 ~~reasonable estimates thereof, taking into account any excess Funds not used or shortages.~~

220 ~~The principal of the Funds shall be held in a separate account by Lender in trust for the benefit of Borrower and deposited in~~
221 ~~an institution, the deposits or accounts of which are insured or guaranteed by a federal or state agency. Lender shall apply the~~
222 ~~Funds to pay said taxes, assessments and insurance premiums. Lender may not charge for so holding and applying the Funds,~~
223 ~~analyzing said account or verifying and compiling said assessments and bills. Lender shall not be required to pay Borrower any~~
224 ~~interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing~~
225 ~~credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional~~
226 ~~security for the sums secured by this Deed of Trust.~~

227 ~~If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments and insurance premiums as they~~
228 ~~fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is~~
229 ~~given in accordance with § 16 (Notice) by Lender to Borrower requesting payment thereof. Provided however, if the loan secured~~
230 ~~by this Deed of Trust is subject to RESPA or other laws regulating Escrow Accounts, such deficiency, surplus or any other~~
231 ~~required adjustment shall be paid, credited or adjusted in compliance with such applicable laws.~~

232 ~~Upon payment in full of all sums secured by this Deed of Trust, Lender shall simultaneously refund to Borrower any Funds held~~
233 ~~by Lender. If under § 18 (Acceleration; Foreclosure; Other Remedies) the Property is sold or the Property is otherwise acquired by~~
234 ~~Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, whichever occurs~~
235 ~~first, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.~~

236 **24. Transfer of the Property; Assumption.** The following events shall be referred to herein as a "Transfer": (i) a transfer
237 or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein); (ii) the
238 execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part
239 thereof or interest therein); (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of 3
240 years; (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty
241 percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in Borrower and (v) the

242 reorganization, liquidation or dissolution of Borrower. Not to be included as a Transfer are (x) the creation of a lien or
243 encumbrance subordinate to this Deed of Trust; (y) the creation of a purchase money security interest for household appliances; or
244 (z) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event
245 of each and every Transfer:

246 **24.1.** All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).

247 **24.2.** If a Transfer occurs and should Lender not exercise Lender's option pursuant to this § 24 to Accelerate,
248 Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured
249 hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run
250 with the Property and remain in full force and effect until said sums are paid in full. Lender may without notice to Borrower deal
251 with Transferee in the same manner as with Borrower with reference to said sums including the payment or credit to Transferee of
252 undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging Borrower's liability
253 hereunder for the obligations hereby secured.

254 **24.3.** Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to § 24.2 above, the
255 mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Lender had actual or
256 constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be
257 estopped therefrom by virtue thereof. The issuance on behalf of Lender of a routine statement showing the status of the loan,
258 whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

259 **25. Borrower's Copy.** Borrower acknowledges receipt of a copy of ~~the Note and~~ this Deed of Trust.

260
261 EXECUTED BY BORROWER.

IF BORROWER IS NATURAL PERSON(s):

doing business as _____

IF BORROWER IS CORPORATION:
ATTEST:

Name of Corporation
By _____
Secretary President

(SEAL)

IF BORROWER IS PARTNERSHIP:

Name of Partnership
By _____
A General Partner

IF BORROWER IS LIMITED LIABILITY COMPANY:

Name of Limited Liability Company
By _____
Its Authorized Representative

Title of Authorized Representative

STATE OF COLORADO

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by
* _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

262 *If a natural person or persons, insert the name(s) of such person(s). If a corporation, insert, for example, "John Doe as President and Jane Doe as
263 Secretary of Doe & Co., a Colorado corporation." If a partnership, insert, for example, "Sam Smith as general partner in and for Smith & Smith,
264 a general partnership." A Statement of Authority may be required if borrower is a limited liability company or other entity (§ 38-30-172, C.R.S.)

SAMPLE