

DEFERRED LOAN AGREEMENT

Project Title: Unity on Park Street Renovation

Loan Amount: \$500,000

PARTIES TO AGREEMENT:

DOUGLAS COUNTY: The Board of County Commissioners of the County of Douglas, State of Colorado (the “Board”)

Address: 100 Third Street
Castle Rock, CO 80104
Telephone: (303) 660-7401
Facsimile: (303) 688-1293

GRANTEE: Unity on Park Street LLLP (the “Grantee”)

Address: 9350 Heritage Hills Circle
Lone Tree, CO 80124

Contact Name: Maria Ciano
Telephone: (303) 784-7814
Email: mciano@douglas.co.us

RECITALS

A. On November 5, 2024, the Board of County Commissioners agreed to extend a deferred loan to Unity on Park Street LLLP, a partnership between Wellspring Community and the Douglas County Housing Partnership. This agreement implements that Board motion. The deferred loan will facilitate renovation of the Unity on Park Street Apartments (“Project”) in Castle Rock for persons with Intellectual and Developmental Disabilities.

AGREEMENT

NOW, THEREFORE, in consideration of the parties’ mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals and Exhibit A.** The recitals set forth above and all exhibits are hereby incorporated herein.

2. **Loan and Project.** Subject to the terms and conditions set forth in this Agreement, the Board agrees to loan Grantee a sum not to exceed **\$500,000** (the “Loan”) in accordance with the terms of the Subordinate Deed of Trust included in this agreement as **Exhibit A**. The Loan shall be used by Grantee solely to complete the Project.

3. **Project Scope.** Grantee shall not materially modify the Project without the prior written approval of the Board. Any material modification to the Project undertaken without the Board's prior written consent may be deemed a breach of this Agreement, entitling the Board to all remedies available under this Agreement.

4. **Authorized Representative.** Dan Avery, (the "Authorized Representative"), is designated as Authorized Representative of the County for the purpose of administering this Agreement.

5. **Payment of Loan.** Subject to the Board's determination in its sole discretion that Grantee is in compliance with this Agreement, the Board shall disburse the loan in one installment after execution of this agreement. Any other provision of this Agreement notwithstanding and pursuant to § 29-1-110, C.R.S., the amount of funds appropriated for this Agreement is **Five Hundred Thousand Dollars (\$500,000)**. In no event shall the County be liable for payment under this Agreement for any amount in excess thereof. The County is not under obligation to make any future apportionment or allocation to this Agreement nor is anything set forth herein a limitation of liability for the Grantee. Any potential expenditure for this Agreement outside the current fiscal year is subject to future annual appropriation of funds for any such proposed expenditure.

6. **Compliance with Regulatory Requirements and Federal and State Mandates.** Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including, but not limited to, nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, and other similar requirements. In addition, Grantee agrees to comply with all necessary licensing and permitting requirements imposed by an agency of a local, state or federal government.

7. **Liability.** The parties expressly agree that they do not contractually waive any limitations on liability or other immunities or defenses available to them by statute or common law, or activities undertaken pursuant to this Agreement. The parties understand and agree that the County, its commissioners, officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provisions of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through 120, or otherwise available to the County.

8. **Indemnification.** The County cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Grantee or any other person or entity whatsoever, for any purpose whatsoever. The Grantee shall defend, indemnify and hold harmless the County, its commissioners, officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including workers' compensation claims, in any way resulting from or arising from this Agreement; provided, however, that the Grantee need not indemnify or save harmless the County, its officers, agents and employees from damages resulting from the sole negligence of the County's commissioners, officials, officers, directors, agents and employees.

9. **No Waiver of Governmental Immunity Act.** The parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary

limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

10. Audits and Accounting. Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and the operation of the Project. Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. The Board shall have the right, upon reasonable notice to Grantee, to audit the books and records of Grantee, to audit the books and records of Grantee which pertain to the Project and to the use and disposition of the Board funds. The Board shall retain the authority to audit for two years after Project completion.

11. Inspection. Throughout the term of this Agreement, the Board shall have the right to inspect the Project area to ascertain compliance with this Agreement.

12. Notices. Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and all other notices shall be made as follows:

by the Grantee to: Douglas County Administration
Dan Avery
100 Third Street
Castle Rock, CO 80104
(303) 660-7401
E-mail davery@douglas.co.us

with a copy to: Douglas County Attorney's Office
100 Third Street
Castle Rock, CO 80104
(303) 660-7414
E-mail attorney@douglas.co.us

and by the County to: Unity on Park Street LLLP
9350 Heritage Hills Circle
Lone Tree, CO 80124
Attn: Maria Ciano
Phone: 303-784-7814
Email: mciano@douglas.co.us

Said notices shall be delivered personally during normal business hours to the appropriate office above, by prepaid first-class U.S. mail, via facsimile, via electronic mail, or other method authorized in writing by the Authorized Representative. Mailed notices shall be deemed effective upon receipt or three (3) days after the date of mailing, whichever is earlier. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

13. **Assignment.** Grantee may not assign its rights under this Agreement.
14. **Applicable Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall lie exclusively in the County of Douglas, State of Colorado.
15. **Severability.** If any provision of this Agreement, or the application thereof, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision other than those as to which it is found to be invalid, shall remain in full force and effect.
16. **Fax, Email and Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by fax or email as if they were original signatures.
17. **Third Party Beneficiary.** The Board and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Board and Grantee, and that no third-party beneficiaries are intended.
18. **Waiver.** The failure of either party to enforce a term hereof shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach of the same, similar, or different nature. No waiver shall be enforceable hereunder unless signed by the party against whom the waiver is sought to be enforced.
19. **Entire Agreement.** Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid, unless made as an amendment to this Agreement, approved by the Board, and signed by the parties in this Agreement.
20. **Advertising, Marketing and Promotional Materials.** The Grantee shall not include any reference to this Agreement or services performed under this Agreement in any of the Grantee's advertising or public relations materials without first obtaining the written approval of the County's Public Affairs Director.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of the ____ day of _____ 2024.

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS,
STATE OF COLORADO**

By: _____ DATE: _____
_____, Chair

ATTEST: (seal)

By: _____ DATE: _____
Deputy Clerk to the Board

APPROVED AS TO LEGAL FORM:

By: _____ DATE: _____
Chris Pratt, Managing County Attorney

APPROVED AS TO FISCAL CONTENT:

BY: _____ DATE: _____
Andrew Copland, Finance Director

APPROVED AS TO CONTENT:

BY: _____ DATE: _____
Douglas J. Debord, County Manager

GRANTEE:

Unity on Park Street, LLLP

Name: (Signature) _____

Name: (Print) _____

Title: _____

Date: _____

EXHIBIT A

SUBORDINATE DEED OF TRUST TO PUBLIC TRUSTEE

After recording, return to:
Douglas County Board of County Commissioners
100 Third Street
Castle Rock, CO 80104

SUBORDINATE DEED OF TRUST TO PUBLIC TRUSTEE

THIS SUBORDINATE DEED OF TRUST TO PUBLIC TRUSTEE (this “Deed of Trust”), is dated as of the [] day of [], 2024, and is made by **UNITY ON PARK STREET LLLP** (the “Grantor,”), **THE PUBLIC TRUSTEE FOR THE COUNTY OF DOUGLAS, COLORADO** (the “Trustee”) and **DOUGLAS COUNTY** (the “Beneficiary”).

Conveyance

For and in consideration of the provisions of this Deed of Trust and the contribution from Beneficiary to Grantor for the Project as defined in the associated Deferred Loan Agreement with Douglas County. “Project” means renovation of the Unity on Park Street Apartments Property, as hereinafter defined, Grantor grants and conveys unto the Public Trustee for the County of Douglas, Colorado, with power of sale, the real property described below, together with all improvements on such real property and all appurtenances to the real property (together, the “Property”). The Property has a street address of 884 Park Street, Castle Rock, CO 80104.

The Land is described as follows:

**LOT 3 CASTLE PARK WEST 1ST AMD, TOWN OF CASTLE ROCK,
COUNTY OF DOUGLAS, STATE OF COLORADO.**

This conveyance is IN TRUST, to secure the payment by Grantor of all amounts due, and the performance by Grantor of all obligations required, under this Deed of Trust. All of the payments and obligations secured by this Deed of Trust are called, collectively, the “Obligations.”

TO HAVE AND TO HOLD the Property unto the said Trustee and to its use, in fee simple; provided however, that Grantor shall remain in quiet and peaceful possession of the Property so long as there is no default as to either any of the Obligations. Beneficiary acknowledges that Beneficiary’s lien on the Property is subject to a first deed of trust for the benefit of MidWestOne Bank securing obligations in the amount of \$4,200,000.00 (the “First Deed of Trust”).

Agreement

3. Deferred Loan Agreement.

(A) *Definitions.* The terms below will have the following definitions when used in this Deed of Trust.

- (iii) “Affordability Period” shall mean a period of time starting on the date of this Deed of Trust and ending thirty (30) years after the date of this Deed of Trust.
- (iv) “Full Refinance” shall mean a refinance of the First Deed of Trust (i) that will generate sufficient funds to pay the First Deed of Trust, the Beneficiary Deed of Trust, and all closing costs of the refinance transaction, and (ii) as to which Beneficiary has been furnished with an Approved Appraisal.
- (v) “Payment Date” shall mean the earliest of (i) the date of any sale or other transfer of the Property by Grantor (except that Permitted Transfers, as defined in Section 1(c) below, will not cause the occurrence of a Payment Date), (ii) the date of a voluntary prepayment of the Beneficiary loan, (iii) the date of closing of a Full Refinance, (iii) the date of an Event of Default, or (iv) the Repayment Deadline, as defined in Section 1(f).

(B) *Deferred Loan by Beneficiary, Repayment.* The parties acknowledge that Beneficiary provided \$500,000.00 (the “Equity Investment”) toward the Project. The parties agree that the Beneficiary Deferred Loan shall accrue 2% simple interest annually. Grantor agrees to pay the Beneficiary Deferred Loan (and any other outstanding Obligations) to Beneficiary on the Payment Date, unless an earlier date for paying any Obligations is provided for in this Deed of Trust. Time is of the essence for payments under this Deed of Trust.

(C) *Change of Use.* During the Affordability Period, Grantor will use the Property as affordable rental housing. Grantor will not vacate or abandon the Property.

(D) *Refinance.* Grantor will not refinance the First Deed of Trust, except in a Full Refinance. Grantor acknowledges that Beneficiary will not subordinate this Deed of Trust to a new deed of trust if Grantor refinances the First Deed of Trust.

(E) *Prepayment, Deadline for Repayment.* Grantor may pay the Beneficiary Deferred Loan at any time by notifying Beneficiary in writing and shall pay the Beneficiary Deferred Loan on the date that is thirty (30) years from the date hereof (the “Repayment Deadline”). The date selected by Grantor for a prepayment in the notice will be the expected Payment Date. Grantor will furnish Beneficiary with an Approved Appraisal at least three (3) days before the expected Payment Date.

(F) *Foreclosure Under First Deed of Trust.* If there is a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, any provisions in this Deed of Trust

restricting the use of the Property or restricting Grantor's ability to sell or transfer the Property, or requiring Grantor to occupy the Property, shall have no further force or effect. Any person (including his successors or assigns) receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Property free and clear from such restrictions.

4. Warranty of Title. Grantor warrants that it owns the Property in fee simple, subject to matters of record, and subject to the First Deed of Trust.

5. Grantor's Covenants. Grantor covenants and agrees as follows:

(A) *Insurance*. Grantor will, at Grantor's expense, keep all improvements on the Property insured under policies covering fire and other perils included in the term "extended coverage." The policies will be issued by companies acceptable to Beneficiary. Subject to the rights of the holder of the First Deed of Trust, the proceeds of any insurance on the Property or of condemnation of all or any part of the Property (the "Insurance or Condemnation Proceeds") will be paid to Beneficiary and will be applied by Beneficiary to the payment of the Obligations or, at the option of Beneficiary, to the restoration, repair and rebuilding of the Property in accordance with procedures satisfactory to Beneficiary. After completion of any restoration or repairs, any Insurance or Condemnation Proceeds remaining will be applied to the payment of the Obligations. Beneficiary will be named as an additional insured and as loss payee and mortgagee under the policies required under this paragraph. The policies will provide that the policies will not be cancelled without thirty (30) days' notice to Beneficiary. If Grantor does not maintain the insurance required under this paragraph, Beneficiary may obtain the insurance on Grantor's behalf, and Grantor will reimburse Beneficiary for the cost of the insurance upon demand. That cost will be secured by this Deed of Trust and added to the amount of the Obligations.

(B) *Maintenance and Alterations*. Grantor will keep the Property and all improvements on the Property in good repair and fully protected from the elements. Grantor will not commit or permit waste on the Property. Grantor will not do or permit any act by which the Property will become less valuable. Grantor will not, without written permission of Beneficiary, remove, demolish, or structurally alter the improvements on the Property.

(C) *Code Compliance and Inspection*. Grantor understands and agrees that Grantor is to maintain the property purchased through the Program in a reasonable manner that will ensure the property does not receive any zoning and/or ordinance violations during the lifetime of the loan provided by Beneficiary. If the subject property does receive any zoning and/or ordinance violations, Grantor understands that such violations must be cured in a reasonable amount of time otherwise the Deferred Loan may become due and payable.

(D) *Beneficiary Expenses*. Grantor will pay upon demand all expenses incurred or paid by Beneficiary (including but not limited to reasonable attorneys' fees and court costs, and Approved Appraisals) on account of any litigation, claim, action or proceeding, which may arise in connection with this Deed of Trust, or on account of any attempt without litigation to preserve or protect Beneficiary's lien on the Property, or to enforce the terms of this Deed of Trust.

6. Events of Default. Any one or more of the following events shall constitute a default ("Event of Default") under this Deed of Trust:

(A) Failure of Grantor to pay the Obligations as and when required under this Deed of Trust.

(B) Failure of Grantor to maintain the insurance required under this Deed of Trust.

(C) Failure of Grantor to observe or perform any of its other covenants, conditions or agreements under this Deed of Trust for a period of thirty (30) days after notice from Beneficiary to Grantor.

(D) Failure of Grantor to occupy the Property as affordable rental housing units.

(E) Any default under the First Deed of Trust or under the loan secured by the First Deed of Trust.

7. Remedies on Default. After an Event of Default, Beneficiary shall have all remedies available at law or in equity, including but not be limited to, the following remedies (which may be exercised concurrently, independently, or successively):

(A) Beneficiary may declare the Obligations immediately due and payable in full.

(B) Beneficiary may spend money and take action it deems necessary to cure or remove any default of Grantor or protect the Property and Beneficiary's lien on the Property. Beneficiary may employ agents or attorneys for the protection of the interest of Beneficiary or this trust. Beneficiary may arrange for Approved Appraisals of the Property. All such money spent by Beneficiary (including court costs and attorneys' fees) will be reimbursable by Grantor and will be added to the Obligations secured by this Deed of Trust.

(C) Beneficiary may invoke the power of sale. If Beneficiary invokes the power of sale, Beneficiary will give written notice to Trustee of the occurrence of an Event of Default and of Beneficiary's election to cause the Property to be sold. The Property will be sold by Trustee at public auction, after giving all notices as are required by law. After the time required by law and after the publication and posting of the notice of sale required by law, Trustee shall sell the property at public auction in accordance with the procedures established by Colorado law. Beneficiary or its designee may purchase the property at any sale, and may, if permitted by law, pay all or a portion of the purchase price by crediting the Obligations. Trustee shall apply the proceeds of the sale in the order required by law.

No delay or failure to exercise any remedy available to Beneficiary after an Event of Default will impair any such remedy or be a waiver of such remedy.

8. Release. Upon full payment of all sums due under the Obligations secured hereby and this Deed of Trust (or a partial payment permitted under 1(d)), the Trustee shall, upon

the request of, and at the cost of Grantor, execute a recordable release of this Deed of Trust in accordance with applicable law.

9. Miscellaneous.

(A) This Deed of Trust will be governed by the laws of the State of Colorado.

(B) Any notice and other communications required or contemplated by this Deed of Trust will be in writing and will be delivered by personal delivery, by certified mail, or by reputable overnight courier, to Grantor at the Property, or to Beneficiary at the address in the first paragraph of this Deed of Trust.

(C) Grantor and any other party liable for the Obligations hereby consent to venue and jurisdiction in the courts of Douglas County, State of Colorado, in any action commenced in connection with this Deed of Trust or enforcement of the Obligations.

WITNESS the following signature(s) as of the day and year first above written.

Unity on Park Street LLLP
By: Douglas County Housing Partnership, a Multijurisdictional Housing Authority
Its: Managing Member

By: _____ DATE: _____
Maria Ciano, Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF _____)

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

My commission expires:
Witness my hand and official seal

Notary Public