

DOUGLAS COUNTY ARPA BENEFICIARY AGREEMENT

This Douglas County ARPA Beneficiary Agreement (the "Agreement"), is made and entered into this ____ day of _____, 2024, by and between **THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO** (the "County") and **TALL TALES RANCH**, a Colorado nonprofit corporation, whose business address is PO Box 631903, Highlands Ranch, CO 80163 (the "Beneficiary"). The County and the Beneficiary shall be referred to herein, individually, as a "Party" and, collectively, as the "Parties."

WHEREAS, on March 11, 2021, the American Rescue Plan Act ("ARPA") was signed into law and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, collectively, the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF"); and

WHEREAS, ARPA provides resources to respond to the COVID-19 public health emergency, its economic impacts, and to rebuild a stronger, more equitable economy as the country recovers; and

WHEREAS, the County received an allocation of SLFRF from the United States Department of the Treasury (the "Treasury") to support recovery efforts including the ability to provide funding to subrecipients and beneficiaries to spend on eligible expenditures under ARPA; and

WHEREAS, within the eligible use categories outlined in the provisions of ARPA, the County has flexibility to determine how best to use payments from ARPA to meet the needs of their communities and populations provided the uses meet the objectives outlined in Section 603(c) of the Social Security Act as added by Section 9901 of ARPA ("SLFRF Objectives"); and

WHEREAS, pursuant to the terms of this Agreement, the County wishes to disburse to the Beneficiary, and the Beneficiary wishes to receive from the County, SLFRF Funds for disbursement through a County COVID-19 grant in order to assist in mitigating and recovering from the impacts of the COVID-19 public health emergency (the "Grant"); and

WHEREAS, the Douglas County Board of County Commissioners has determined that the grant described herein is reasonably necessary to mitigate and/or recover from the impacts of the COVID-19 public health emergency and is an eligible expenditure of SLFRF under ARPA; and

WHEREAS, the Parties desire to enter to this Agreement in order to set forth the terms and conditions pertaining to such Grant.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises herein contained, the County and the Beneficiary agree as follows, provided, however, those provisions contained herein that are applicable to ARPA funds shall not apply to any non-ARPA funds received by Beneficiary:

1. Amount of Grant. The County shall provide SLFRF funds, accrued interest earned on SLFRF funds, or similar to the Beneficiary in total amount not to exceed Two Million and no/100 (\$2,000,000.00) (the “Grant Funds”). The County shall disburse Grant Funds as described in Exhibit A, attached hereto and incorporated herein.

To the extent any Grant Funds provided to the Beneficiary under this Agreement are not actually expended, or any costs and expenses are subsequently refunded to the Beneficiary, the Beneficiary agrees that it shall return any Grant Funds that are unused or refunded to the County by the date specified in Section 2 below. Any Grant Funds provided, in whole or in part, by the County, are still subject to federal review and have the potential to be subsequently dis-allowed. As such, no provision of Grant Funds by the County shall be construed to operate as a waiver of the Beneficiary’s obligation to comply with the SLFRF Objectives, this Agreement, and any other laws, regulations or rules; nor and shall any such provision operate as a waiver or estoppel of the Beneficiary’s obligation to return/repay any Grant Funds distributed to the Beneficiary that are subsequently found to not have been used or reimbursed for objectives and eligible expenses as defined in the Treasury SLFRF Interim or Final Rule (“Eligible Expenses”) or the use of which was found to be in violation of this Agreement or otherwise unlawful.

2. Use of Grant Funds. The Beneficiary hereby certifies that it or its affiliate shall use Grant Funds for Eligible Expenses only and shall return any unexpended Grant Funds to the County by December 31, 2026, except where a subsequent date is approved in writing from Douglas County. Uses of the Grant Funds are limited to those described in Exhibit B, attached hereto and incorporated herein. Sub-award of any Grant Funds is not allowed without the written approval of the County. Beneficiary agrees to comply with all applicable provisions of 2 CFR 200 subpart D.

3. Accounting. Beneficiary agrees to comply with the accounting principles and procedures required by 2 CFR 200, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The Beneficiary also agrees to be solely responsible for ensuring that it disburses and accounts for the Grant Funds received from the County in strict compliance with any regulations or guidance issued by the Treasury, this Agreement, and all other applicable statutory and regulatory accounting requirements. The Beneficiary shall maintain a complete set of books and records documenting its use of Grant Funds and its supervision and administration of the various projects funded. Records are to include documentation verifying project eligibility and financial and other administrative aspects involved in use of the Grant Funds.

4. Audit/Records of Expenditures. The County and any of its duly authorized representatives shall have reasonable access to any books, documents, papers, and records of the Beneficiary which are pertinent to this Agreement for the purpose of making an audit, examination, or excerpts. Beneficiary shall provide any documentation necessary to prepare all reporting required of or by the County, and shall keep all books, documents, papers and records which are pertinent to the Beneficiary’s performance for a minimum period of five (5) years from December 31, 2024, or the date of the last expenditure of Grant Funds, whichever is later. The records shall be sufficient to definitively establish that the Grant Funds were used in a manner consistent with this Agreement. Should Beneficiary fall out of compliance with the requirements of this section, the County shall notify the Beneficiary in writing of their non-compliance and Beneficiary shall have thirty (30) days to meet compliance requirements. If

Beneficiary fails to comply with the use criteria or fails to keep and maintain adequate records as provided herein following the opportunity to cure, it shall be required to return the Grant Funds or any portion thereof upon the written request of the County.

Beneficiary agrees to cooperate with the County fully and completely in any audit of the Grant Funds provided to the Beneficiary pursuant to this Agreement. If the County incurs legal expenses relating to an audit of the Beneficiary's expenditure of Grant Funds, the Beneficiary agrees to pay the County's reasonable attorneys' fees and costs associated with such audit and/or any legal action in which the Beneficiary is alleged to have mis-used or failed to properly account for the Grant Funds.

Beneficiaries are not subject to the requirements placed on subrecipients in the Uniform Guidance, including audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F and are not required to report the Funds received through this Agreement on a Schedule of Expenditures of Federal Awards (SEFA).

5. Reporting. The source of Funds for this Agreement is either accrued interest earned on SLFRF funds, or the County's calculated revenue loss as permitted under § 35.6(d) of the SLFRF Final Rule. The Final Rule provides that these Funds may be used for the provision of government services. Final Rule FAQ 13.14 notes that "Recipients' (the County) use of revenue loss funds does not give rise to subrecipient relationships" The FAQ further notes that "Treasury is not collecting subaward data for projects categorized under Expenditure Category Group 6 "Revenue Replacement." As such, the County considers the recipient of these funds a Beneficiary rather than a Subrecipient. Beneficiaries are not subject to the reporting requirements placed on subrecipients in the Uniform Guidance. However, the Beneficiary shall timely provide to the County such information or documents as may be required by Exhibit A or elsewhere in this Agreement, or by applicable federal or state laws, regulations and guidelines.

6. SLFRF Requirements. Beneficiary shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d *et seq.*, as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Further, Beneficiary agrees to comply with all of the terms and conditions contained in pages 2-4 of the attached Exhibit C, and Beneficiary agrees to comply with assurances 1-4 on page 5 of Exhibit C.

7. Non-Eligible Use of Grant Funds. Any item of expenditure by Beneficiary under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of County, the County's external auditor, the U.S. Government Accountability Office, or the Comptroller General of the United States to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of Beneficiary, shall become Beneficiary's liability, to be paid by Beneficiary from funds other than those provided by County under this Agreement or any other agreements between County and Beneficiary. This

provision shall survive the expiration or termination of this Agreement.

8. Disputes/Release. Beneficiary understands that the County is required to obligate its allocation of SLFRF funds by no later than December 31, 2024 and expend the funds by no later than December 31, 2026. Any unexpended Grant funds as of that date must be returned by the County to the Treasury. Beneficiary acknowledges that the County's decisions concerning any advancement of Grant Funds, or reimbursement of any submittal or re-submittal are final, and cannot be challenged or appealed in court or otherwise. Beneficiary hereby waives, relinquishes, and forever releases any and all claims or actions for damages, injunctive relief, and any other relief of any kind whatsoever, that it has or may have now or in the future, against Douglas County, its Board of County Commissioners, elected and appointed officials, employees and agents, to obtain advancement or reimbursement of Grant Funds and/or expenses related to the SLFRF Objectives, or to obtain damages for the County's failure to advance or pay Grant Funds and/or expenses related to SLFRF Objectives, or to seek any other relief that is inconsistent with this section of the Agreement.

9. Notice. Notices to be provided under this Agreement shall be given in writing and either delivered by hand, deposited in the United States mail with sufficient postage, or via e-mail. The addresses for Notices are as follows:

To the County: Douglas County Attorney
100 Third Street
Castle Rock, CO 80104

To the Beneficiary: Douglas County Housing Partnership
9350 Heritage Hills Circle
Lone Tree, Colorado 80124

With a copy to: Laura McKenna
Executive Director
Tall Tales Ranch
PO Box 631903
Highlands Ranch CO 80163

With a copy to: Holland & Hart LLP
1800 Broadway, Suite 300
Boulder, CO 80302
Attn: Christopher Gunlikson

10. General Terms

A. Beneficiary Representation. Beneficiary hereby certifies that it or its affiliates have the experience and ability to perform its obligations under this Agreement; that it will perform said obligations in a professional, competent, and timely manner and with diligence and skill; that it has the power to enter into and perform this Agreement and grant the rights granted in it; and that its performance of this Agreement shall not infringe upon or violate the rights of any third party, whether rights of copyright, trademark, privacy, publicity, libel, slander or

any other rights of any nature whatsoever, or violate any federal, state and/or municipal laws.

B. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. The venue for any lawsuit concerning this agreement shall be in the District Court for Douglas County, Colorado.

C. Assignment. Beneficiary may not assign any of its rights or obligations hereunder to a third party non-affiliate without the prior written consent of the County.

D. No Joint Venture/Independent Contractor. Nothing in this Agreement is intended or shall be construed to create a joint venture between the County and the Beneficiary. Beneficiary, its agents, employees, contractors, or subcontractors, are independent contractors for purposes of this Agreement and are not to be considered employees or agents of the County for any purpose. Beneficiary, its agents, employees, contractors, and/or subcontractors, are not subject to the terms and provisions of the County's personnel policies handbook and shall not be considered a County employee for workers' compensation or any other purpose. Beneficiary, its agents, employees, contractors, or subcontractors, are not authorized to represent the County or otherwise bind the County in any way. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Beneficiary to provide services for the use of Grant Funds under this Agreement shall be and remain at all times employees of Beneficiary for all purposes. The County shall never be liable or responsible for any debt, obligation, or liability of the Beneficiary.

E. Authorization. By signing on behalf of the Beneficiary below, the undersigned represents that the undersigned is authorized to enter into this Agreement on behalf of the Beneficiary and can attest to and is knowledgeable of the matters stated and certified therein.

F. Entire Agreement/Modifications. This instrument shall constitute the entire agreement between the County and the Beneficiary and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. This Agreement may not be amended or modified except through a writing signed by the Parties.

G. No Waiver. No provision or terms of this Agreement shall be deemed to be waived by the County except in writing signed by the Board of County Commissioners or person authorized to sign by resolution of the Board, and any waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver, unless specifically so stated.

H. Non-appropriation. Pursuant to C.R.S. Section 29-1-110, as amended, the financial obligations of the county as set forth herein after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise available.

I. Third-Party Beneficiaries. It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating thereto shall be strictly reserved to the County and the Beneficiary. Nothing contained in this Agreement shall give

or allow any claim or right of action whatsoever by any other third person.

J. Survival of Terms and Conditions. Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that anticipate continued performance, compliance or effect beyond the termination date of this Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

K. Insurance. Beneficiary shall procure and maintain insurance coverages during the term of this Agreement to cover all liability, claims, demands, and other obligations assumed by Beneficiary in amounts not less than as follows: 1) Workers' Compensation: statutory limits 2) General Liability Insurance or self-insurance for claims of bodily injury, property damage and personal injury liability subject to the Colorado Governmental Immunity Act.

Beneficiary shall satisfy the above insurance requirements with insurance in accordance with the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and the Colorado Risk Management Act, C. R.S. §24-30-1501, et seq. The Beneficiary's coverages above shall be primary and non-contributory with any insurance or self-insurance carried by the County. Beneficiary shall be solely responsible for any deductible losses under any policy required above. Beneficiary 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.

L. Indemnification. The County cannot and by this agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Subrecipient/Beneficiary or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions or proceedings of any kind are not the result of willful misconduct or professional negligence on the part of County or its commissioners, officials, officers, directors, agents and employees ("County Representatives"), the Subrecipient/Beneficiary shall defend, indemnify and hold harmless the County Representatives 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 out of Subrecipient's/Beneficiary's use of the Grant Funds or while this Agreement is in effect; provided, however, that the Subrecipient/Beneficiary need not indemnify or save harmless the County, its officers, agents and employees from damages resulting from the negligence or willful misconduct of the County Representatives. This provision shall survive the expiration or termination of this Agreement for two (2) years following the date on which this Agreement is terminated or, if later, the date on which Subrecipient/Beneficiary disburses or returns the balance of the Grant Funds.

M. Governmental Immunity. 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, protections, notice requirements or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10- 101 *et seq.* as applicable now or hereafter amended. There is no intent to waive or restrict governmental immunity.

N. Investor and Lender Requirements. This Agreement shall be subject to and

subordinate to the investor and lender obligations and requirements in connection with their primary funding of the project described in Exhibit B. This Agreement may be modified to be consistent with such reasonable investor and lender obligations and requirements, if necessary and if such modification will not result in noncompliance with state or federal grant funding requirements.

IN WITNESS WHEREOF, the County and the Beneficiary have executed this Agreement as of the date(s) set forth below.

**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: _____
_____, Senior Assistant County Attorney

APPROVED AS TO FISCAL CONTENT:

BY: _____ DATE: _____
Andrew Copland, Finance Director

APPROVED AS TO CONTENT:

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

Tall Tales Ranch

By: _____

Printed Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Printed Name: _____

Title: _____

EXHIBIT A

Disbursement of Grant Funds/Reporting

- 1. Prerequisite to Receiving Funds.** Prior to disbursement of funds Beneficiary shall provide information and/or complete any forms as required by the County to ensure proper Beneficiary monitoring under 2 CFR 200. Subpart D - Post Federal Award Requirements.
- 2. Disbursement of Funds.** The County shall disburse the Grant Funds directly to the Beneficiary via check or ACH, at the discretion of the County, as follows:

Upon execution of this Agreement and receipt of any forms required in part 1 above, the County shall make payments under this agreement upon submittal of invoices for costs as described in Exhibit B. Invoices will include a certification that the Beneficiary or its affiliates used the funds as described in Exhibit B. The County shall make payments within forty-five (45) days

- 3. Reporting Requirements.** The source of Grant Funds for this Agreement is either accrued interest earned on SLFRF funds, or the County's calculated revenue replacement as permitted under § 35.6(d) of the SLFRF Final Rule. The Final Rule provides that these Grant Funds may be used for the provision of government services. Treasury Guidance (SLFRF Final Rule FAQs) indicate that "Treasury is not collecting subaward data for projects categorized under Expenditure Category Group 6 "Revenue Replacement." Treasury has determined that there are no subawards under this eligible use category." The Beneficiary acknowledges that these reduced reporting standards are subject to change at the discretion of the U.S. Department of Treasury, and agrees to provide such financial, performance, and compliance reporting and/or records, in such form, as may be requested by the County, including, but not be limited to, the following:

A. Documentation of the Grant Funds used to date to include a description of the expenditure, date of the expenditure, amount, vendor/payee, and typical supporting information for the expense such as contracts, invoices, vouchers, receipts, payroll records, or other official documentation and a certification that the expenses were in compliance with the requirements of ARPA and this Agreement.

Beneficiary further agrees that it shall keep adequate records in such form and substance as may be requested by the County for a minimum period of 5 years from December 31, 2024, or the date of the last expenditure of Grant Funds, whichever is later. The records shall be sufficient to definitively establish that the Grant Funds were used in a manner consistent with the above criteria in Exhibit B.

EXHIBIT B

Use of Grant Funds

1. Use of Grant Funds. Beneficiary shall use the Grant Funds as follows:

Treasury Guidance provides that SLFRF Funds can be used for affordable housing investments, and when revenue loss funds are applied, the funds can be used for broad governmental purposes.

Beneficiary shall use the Grant Funds for construction of twenty-eight (28) affordable housing units at 10800 S Havana Street, Lone Tree, CO. Hard construction costs eligible for funding include earthwork, foundations, flatwork, vertical construction, fire sprinkler system installation, plumbing systems, roofing and sheet metal, and electrical work associated with phase I construction.

2. Period of Performance and Performance Standards.

The Beneficiary shall fully expend Grant Funds by December 31, 2026.

The Beneficiary or its affiliate shall create and operate not less than twenty-eight (28) affordable housing units. The units will be deed restricted to a minimum of thirty (30) years and affordable for those at or below 100% Area Median Income (AMI), as evidenced by a use restriction recorded against the property by the Colorado Housing and Financing Authority. If additional use restrictions are required pursuant to this Agreement, such use restrictions will be subject and subordinate to the investor and lender interests so long as such interests do not require noncompliance with state and federal grant funding requirements. The deed restriction shall be recorded prior to September 30, 2026.