

BOULDER COUNTY WORTHY CAUSE FUNDING AGREEMENT

between

COUNTY OF BOULDER, STATE OF COLORADO

and

[AGENCY]

AWARD AMOUNT: \$[AMOUNT]

Worthy Cause Round: IV

Worthy Cause Year: [FUNDING YEAR]

Capital Funding Type:

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

1. PARTIES

This Boulder County Worthy Cause Funding Agreement (hereinafter called “Funding Agreement”) is entered into by and between [AGENCY] (hereinafter called the “Agency”), and the COUNTY OF BOULDER, Colorado, a body corporate and politic (hereinafter called the “County”). The Agency and the County are each a “Party,” and collectively are “Parties” to this Funding Agreement.

2. RECITALS

A. Authority, Appropriation, and Approval

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

B. Consideration

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

C. Purpose

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

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

3. DEFINITIONS

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

Deed of Trust: “Deed of Trust” means the Deed of Trust executed by the Agency and recorded on the title to the Property in a form substantially similar to **Exhibit D**.

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

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

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

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

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

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

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

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

Funding Documents: "Funding Documents" means the Promissory Note, Deed of Trust, and Restrictive Covenant (if required), and all such other documents, instruments and agreements and all amendments, replacements, extensions and renewals of any of the foregoing.

Note: "Note" means the Promissory Note to be executed by the Agency in favor of the County, which will be in a form substantially similar to **Exhibit C**.

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

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

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

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

Services: "Services" means the core services to be performed by the Agency as set forth in detail in **Exhibit B**.

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

4. INCORPORATION

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

5. TERM

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

6. AGENCY OBLIGATIONS

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

7. PAYMENTS TO AGENCY

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

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

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

- i. Receipt of an executed copy of this Funding Agreement;
- ii. Receipt of an executed Promissory Note;
- iii. Receipt of an executed Deed of Trust;
- iv. Receipt of an executed Restrictive Covenant (if required by the County);
- v. Receipt of a copy of the Agency’s W-9 Form;
- vi. Receipt of a copy of Title Report pursuant to **§8**;
- vii. Receipt of a copy of Property Valuation pursuant to **§8**; and

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

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

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

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

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

8. TITLE REPORT AND PROPERTY VALUATION

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

9. ACKNOWLEDGEMENT OF RECEIPT

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

- a. Name and address of the Agency;
- b. Amount of funds received; and
- c. A description of how the funds were used.

10. PROMISSORY NOTE AND DEED OF TRUST

The Agency will execute (1) a Promissory Note in favor of the County to evidence the Agency's obligations hereunder and (2) a Deed of Trust, which the County will record against the Property. The Promissory Note and Deed of Trust will be executed by the Agency as soon after the execution of this Funding Agreement as practicable and promptly submitted to the County. The County will file the Deed of Trust in the Boulder County Clerk and Recorder's Office.

11. RESTRICTIVE COVENANT

If required by the County, the Agency will execute a Restrictive Covenant in favor of the County, the form of which will be substantially similar to **Exhibit E** (human services delivery) or **Exhibit F** (permanently affordable housing). The County will file the Restrictive Covenant in the Boulder County Clerk and Recorder's Office.

12. REPORTING, NOTIFICATION

A. Performance

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

B. Reporting

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

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

C. Annual Certification

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

13. COMPLIANCE AUDITING

A. Records Maintenance

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

B. Inspection and Monitoring

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

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

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

14. SUBSTITUTE COLLATERAL

With the passage of time, the Property may no longer be suitable for the Program, and it might be necessary for the Agency to secure an alternate property for the Program. Consequently, if the Agency notifies the County that it wishes to purchase another property in Boulder County to replace the Property, and the County determines in its sole discretion that the new Property is sufficient to protect the County's interests, the County will release the Deed of Trust recorded against the Property and the Parties will replace such instrument with a new deed of trust or other security instrument acceptable to the County in its sole discretion, to be recorded against the substitute property to secure the Agency's obligations through the remainder of the Funding Agreement Term. Notwithstanding anything to the contrary herein, the Agency may assign its rights and obligations under this Funding Agreement pursuant to §25(A).

15. MODIFICATIONS TO THE PROGRAM AND THE SCOPE OF SERVICES

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

16. CONFLICTS OF INTEREST

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

17. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

B. Legal Authority – Agency and Agency's Signatory

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

C. Licenses, Permits, Etc.

The Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it will have, at its sole expense, all licenses, certifications,

approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder.

D. Compliance with Laws

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

18. DELEGATION OF COUNTY SIGNATURE AUTHORITY

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

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

19. BREACH

A. Defined

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

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

B. Notice and Cure Period

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

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

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

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

20. RIGHT TO ACCESS

The County will be permitted access to, and entrance upon, the Property at all reasonable times upon reasonable advance notice, where 48 hours advance notice will be presumed reasonable. The Agency will allow the County access to its records, which will include, but are not limited to, the Agency’s financial statements. The Agency grants the County authority to make copies of any Agency records related to the Agency’s performance under this Funding Agreement.

21. REMEDIES

A. Authority to Pursue Available Remedies

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

B. Remedies upon Uncured Default

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

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

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

22. NOTICES

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

23. RIGHT OF FIRST REFUSAL

During the term of this Funding Agreement, before the Agency may sell the Property to a third party, the Agency will first offer the Property to the County following the procedures set forth in this paragraph. The County will have thirty (30) days following the date the Agency first presents the County such offer to decide whether to try to negotiate an agreement for the purchase of the Property from the Agency. If the County desires to try to negotiate such an agreement, the County will, within said thirty (30) day period, deliver to the Agency written notice thereof. Promptly thereafter, the Parties will commence good faith negotiations

exclusively with each other for a period not to exceed 120 days after the date the County gives the requisite notice to the Agency. If the Agency does not receive said notice within said thirty (30) day period, or if the Agency receives said notice within said period but the Parties do not enter into a legally binding, written agreement for the purchase and sale of the Property within said 120 day period, the Agency will be free to enter into an agreement with a third party on terms (considered as a whole) no more favorable to the third party than the Agency offered to the County.

24. GOVERNMENTAL IMMUNITY

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

25. GENERAL PROVISIONS

A. Assignment: Neither Party will assign, sublet, or transfer its interest in this Funding Agreement without the written consent of the other. Upon receipt of a written request from the Agency, the Board of Boulder County Commissioners' Deputy (or his or her designee) will have the authority to approve an absolute assignment of all of the Agency's rights and obligations under this Funding Agreement to another agency eligible for Worthy Cause, such as a nonprofit organization, so long as the assignee provides the County adequate written assurance that it accepts the assignment and can and will satisfy all obligations of the Agency regarding the Program. The County's consent to the aforementioned assignment will not be unreasonably withheld or delayed.

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

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

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

E. Indemnification: The Agency will defend, indemnify, save, and hold harmless the County and its employees and agents against any and all losses, claims, suits, judgments, or liabilities incurred as a result of any act or omission by the Agency, or its employees, agents, volunteers, subcontracts, or assignees pursuant to the terms of this Funding Agreement. The Agency will pay all costs and reasonable attorney's fees, if any, incurred by the County as a result of any such claims or suits, provided that the Agency will have the right to defend the interests of the County with counsel selected by the Agency reasonably acceptable to the County.

In the alternative, if the County is obliged to defend such claims or suits, the time, if any, of the attorneys and paralegals in the Boulder County Attorney's Office spent on any such claims or suits will be paid for by the Agency in accordance with the current hourly market rates in Boulder County for legal services at the time of such legal defense for submission of litigation billing and charges in court cases.

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

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

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

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

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

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

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

M. Non-Discrimination: The Agency will not discriminate on the basis of race, creed, color, gender, gender identity, age, marital status, national origin, disability or familial

status, religion, sexual orientation, genetic information, or any other status protected by applicable federal, state, or local law in the performance of its obligations hereunder.

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

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

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

Q. Electronic Signatures and Electronic Records: Each of the Parties consents to the use of electronic signatures by the other Party. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by any of Parties in the manner specified by such signing Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

26. EARLY TERMINATION BY AGENCY

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

[SIGNATURE PAGES TO FOLLOW]

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

[AGENCY], a Colorado [nonprofit corporation *or housing authority*]

By: _____
Name: _____
Title: Executive Director

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

By: _____
Name: Marta Loachamin
Title: Chair of the Board of County Commissioners

Attest: _____ Date: _____

Clerk to the Board

SAMPLE

EXHIBIT A

LEGAL PROPERTY DESCRIPTION

LEGAL PROPERTY DESCRIPTION COUNTY OF BOULDER, STATE OF COLORADO.

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

SAMPLE

EXHIBIT B

I. PURPOSE OF FUNDING AGREEMENT

The County has awarded the Agency with \$AMOUNT in Worthy Cause Funds to
PURPOSE OF AWARD.

II. DESCRIPTION OF THE PROJECT

PROJECT DESCRIPTION

III. DESCRIPTION OF AGENCY'S MISSION

MISSION

IV. DESCRIPTION OF THE PROGRAM

PROGRAM DESCRIPTION

V. SCOPE OF SERVICES

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

- SERVICE
- SERVICE

VI. PROPERTY VALUE: \$AMOUNT

VII. NOTICE

Notices will be sent to the addresses below:

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

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

For the Agency: AGENCY
ADDRESS
ADDRESS
Attn: Executive Director

EXHIBIT C

PROMISSORY NOTE BOULDER COUNTY WORTHY CAUSE DEBT

\$AMOUNT

[DATE]

FOR VALUE RECEIVED, AGENCY, a Colorado nonprofit corporation or housing authority (“Borrower”), promises to pay to the order of the County of Boulder, Colorado, a body corporate and politic (“Payee”), the principal sum of **\$AMOUNT**, together with interest thereon at a rate as set forth herein. Principal and accrued interest are subject to repayment by Borrower through the date that is exactly 99 years after the date of this Note, as set forth herein.

Notwithstanding anything herein to the contrary, except upon the occurrence of an event of default, payments will be not required under this Note. Events of default are described collectively in this Note, the Boulder County Worthy Cause Funding Agreement, and the Deed of Trust.

This Note evidences a debt owed by Borrower to Payee, due and payable upon an Event of Default, pursuant to a Boulder County Worthy Cause Funding Agreement dated [DATE OF SIGNATURE] (the “Funding Agreement”) between Borrower and Payee. Borrower (i) acknowledges and agrees that the Funding Agreement requires Borrower to perform certain obligations under the Funding Agreement, and Borrower agrees to perform, and will perform its obligations under the Funding Agreement, and (ii) any default under the Funding Agreement for which Borrower is responsible, if not cured within applicable cure periods, will constitute a default under this Note.

This Note is executed in connection with and is secured by, and the holder of this Note is entitled to the benefits of a Deed of Trust to Public Trustee (“Deed of Trust”) given by Borrower for the benefit of Payee to secure this Note. Reference is made to the Deed of Trust for a description of the property covered thereby and the rights, remedies and obligations of the holder hereof in respect thereto.

Time is of the essence hereof. In the event of any default or event of default under the provisions of the Deed of Trust, that is not cured within any applicable cure periods set forth therein, then the whole outstanding principal sum of this Note plus accrued interest and all other obligations of Borrower to holder, direct or indirect, absolute or contingent, now existing or hereafter arising, will, at the option of the holder of this Note, become immediately due and payable without notice or demand, and the holder of this Note will have and may exercise any or all of the rights and remedies provided herein and in the Deed of Trust, as they may be amended, modified or supplemented from time to time, and under applicable law.

If Borrower fails to pay any amount due under this Note and Payee has to take any action to collect the amount due or to exercise its rights under the Deed of Trust, including, without limitation, retaining attorneys for collection of this Note, or if any suit or proceeding is brought for the recovery of all or any part of or for protection of the indebtedness or to foreclose the Deed of Trust, then Borrower agrees to pay on demand all reasonable costs and expenses of any such action to collect, suit or proceeding, or any appeal of any such suit or proceeding, incurred

by Payee, including, but not limited to, the reasonable fees and disbursements of Payee's attorneys and their staff.

Borrower waives presentment, notice of dishonor, notice of acceleration and protest, and assents to any extension of time with respect to any payment due under this Note, to any substitution or release of collateral and to the addition or release of any party. No waiver of any payment or other right under this Note will operate as a waiver of any other payment or right.

In the event that this Note becomes due and payable following Borrower's default under the provisions of the Deed of Trust, or Borrower otherwise terminates the Funding Agreement prior to the expiration of its 99-year term, the Borrower will pay to Payee the principal sum of **\$AMOUNT** plus 5% interest.

If any provision in this Note will be held invalid, illegal or unenforceable in any jurisdiction, the validity, legality or enforceability of any defective provisions will not be in any way affected or impaired in any other jurisdiction, and in case of such determination of invalidity, illegality or unenforceability, all other provisions of this Note will remain fully enforceable and will be interpreted so as to give force and effect to the maximum extent possible of the intent of the parties in drafting the provisions of this Note, including any provision that has been held to be invalid, illegal or unenforceable.

No delay or failure of the holder of this Note in the exercise of any right or remedy provided for hereunder will be deemed a waiver of such right by the holder hereof, and no exercise of any right or remedy will be deemed a waiver of any other right or remedy that the holder may have.

Neither Borrower, any member, partner, officer, director, shareholder, employee, agent or affiliate of Borrower, or any third party will have any personal liability for any amounts owing under this Note, and in the event of any default under this Note Payee will look solely to the collateral securing this note, and will not be entitled to seek any deficiency from Borrower, or any member or affiliate of Borrower, or any third person.

All notices given hereunder will be in writing, will be hand delivered or sent by overnight courier or by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

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

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

For the Borrower: AGENCY
ADDRESS

ADDRESS
Attn: Executive Director

Any such notice will be deemed effective when hand delivered, or one day after timely delivery to an overnight courier for next day delivery (as evidenced by a receipt from the overnight courier), or three days after notice is deposited with the U.S. Postal Service.

At the option of the holder hereof, an action may be brought to enforce this Note in the District Court in the County of Boulder, Colorado or in any other court in which venue and jurisdiction are proper. Borrower and all signers or endorsers hereof consent to venue and jurisdiction in the District Court in the County of Boulder, Colorado, and to service of process as permitted under Colorado law, in any action commenced to enforce this Note.

This Note is to be governed by and construed according to the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in the State of Colorado for performance in the State of Colorado, without regard to principles of conflicts of laws. Time is of the essence in all provisions of this Note.

BORROWER:

AGENCY, a Colorado nonprofit corporation *or housing authority*

By: _____

Name: _____

Title: Executive Director

EXHIBIT D

DEED OF TRUST TO PUBLIC TRUSTEE BOULDER COUNTY WORTHY CAUSE DEBT

Grantor: AGENCY, a Colorado nonprofit corporation *or housing authority*, whose address is ADDRESS.

Beneficiary: County of Boulder, Colorado, a body corporate and politic, whose address is 1325 Pearl Street, Boulder, CO 80302.

Trustee: The Public Trustee of the County of Boulder, Colorado.

Property: Grantor, 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:

LEGAL PROPERTY DESCRIPTION COUNTY OF BOULDER, STATE OF COLORADO.

Also known by street and number as ADDRESS.

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions will also be covered by this Deed of Trust to Public Trustee (“Deed of Trust”). All of the foregoing is referred to in this Deed of Trust as the “Property.”

Obligations Secured:

All indebtedness evidenced and created by a Promissory Note of even date herewith from Grantor in the principal amount of \$AMOUNT (the “Note”), payable to Beneficiary, which Note evidences a debt payable in accordance with the terms and provisions of the Note, and all renewals, extensions, modifications, amendments and restatements thereof and substitutions therefor; and

All other indebtedness due under the Note, this Deed of Trust, the Boulder County Worthy Cause Funding Agreement (“Funding Agreement”), and/or any other document, instrument or agreement evidencing, securing or governing the debt evidenced by the Note (the Note, this Deed of Trust, the Funding Agreement and all such other documents, instruments and agreements and all amendments, replacements, extensions and renewals of any of the foregoing are hereinafter collectively referred to as the “Debt Documents”).

The obligations described in this Section 5 are referred to as the “Obligations.”

Grant. As security for the Obligations, Grantor hereby grants, bargains, sells, mortgages and conveys the Property to Trustee in trust with the power of sale for the use and benefit of Beneficiary.

Representations. Grantor covenants that Grantor 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. Grantor warrants that the person signing this Deed of Trust on behalf of Grantor has been fully and properly authorized to do so and that this Deed of Trust constitutes the valid, binding and enforceable obligation of Grantor.

Covenants of Grantor. Grantor covenants and agrees to:

(a) satisfy all the Obligations on or before the date the Obligations are due and to comply with and perform according to their terms all of the covenants and agreements contained in this Deed of Trust, the Note, the Funding Agreement, and any other Debt Documents;

(b) perform all of Grantor's obligations under any prior deed of trust and any other prior liens ("Permitted Encumbrances"). Grantor will 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. Despite the foregoing, Grantor will not be required to make payments otherwise required by this section if Grantor, after notice to Beneficiary, will in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Grantor making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed;

(c) obtain and maintain at all times policies of insurance in an amount equal to the full replacement cost of all improvements on the Property, insuring against all risk of loss, damage, destruction, theft or any other casualty, and such other hazard or similar insurance as Beneficiary may reasonably require, and to obtain and maintain comprehensive general liability insurance covering the Property and Grantor in an amount reasonably satisfactory to Beneficiary, all of the foregoing with such policy provisions and with such companies as may be reasonably approved by Beneficiary, with Beneficiary named as a loss payee (with respect to property insurance) and as an additional insured (with respect to liability insurance) and providing that any such policy will not be canceled without 30 days' prior written notice from the insurer to Beneficiary, and to assign and deliver original or certified copies of all policies of insurance to Beneficiary;

(d) keep the Property and any improvements which may at any time be on the Property in good condition and repair and not to commit or suffer any material waste;

(e) not commit or suffer destruction or removal of all or any material part of the Property without the prior written consent of Beneficiary;

(f) comply with applicable insurance policy provisions and all laws, ordinances, rules and regulations of governmental authorities governing or applicable to the Property or its use;

(g) keep the Property and any improvements thereon free and clear of all material liens, judgments or other encumbrances other than the Permitted Encumbrances; and

(h) appear in and defend any action or proceeding purporting to affect the Property and any improvements thereon. Grantor acknowledges that the amounts advanced by

Beneficiary under the Note represent funds received by Beneficiary pursuant to the Funding Agreement, **Boulder County Worthy Cause Funding Agreement** dated [DATE OF SIGNATURE], between Grantor and Beneficiary, and that the Funding Agreement requires Beneficiary to secure Grantor's agreement to perform certain obligations under the Funding Agreement. Grantor further covenants and agrees that it agrees to perform, and will perform, its obligations under the Funding Agreement, and will indemnify, defend and hold harmless Beneficiary from any loss, claims or damages arising from Grantor's failure to perform such obligations.

Events of Default. The occurrence of any of the following will constitute an "event of default" hereunder:

- (a) Grantor's failure to perform or observe any other covenant, agreement, duty or obligation contained in this Deed of Trust, which failure is not cured within 90 days after notice thereof from Beneficiary to Grantor or such longer period as may reasonably be necessary so long as Grantor is diligently working in good faith to cure;
- (b) Any warranty, representation or statement of Grantor in this Deed of Trust, or otherwise made or furnished to Beneficiary by or on behalf of Grantor, proves to have been false in any material respect when made or furnished; or
- (c) The occurrence of any default or event of default (however defined) under the Note or any of the other Debt Documents, which include but are not limited to:
 - i. Failure of Grantor to use the Property for a period of thirty (30) or more consecutive days as a necessary and integral part of the Program, as defined in the Funding Agreement;
 - ii. Failure of the Grantor to fulfill its obligations under the Funding Agreement or otherwise materially violate any covenant therein;
 - iii. All or any part of the Grantor's interest in the Property is sold, assigned, conveyed, hypothecated, alienated, or otherwise transferred without the Beneficiary's prior written consent;
 - iv. The filing of a petition by the Grantor for any proceedings under federal or state bankruptcy acts or other similar-type proceedings seeking protection from creditors not dismissed within 120 days thereafter;
 - v. The giving by the Grantor of an assignment of any interest in the Property for the benefit of creditors; or
 - vi. The dissolution of the Grantor as an entity other than in conjunction with a merger or consolidation of said entity into, or the transfer of the Property to, another or surviving entity which will thereby become the owner of the Property and continue the Program, as defined in the Funding Agreement.

Remedies Upon Default. Upon the occurrence of any event of default, Beneficiary will have the following rights and remedies which will be cumulative and which may be exercised with or without notice, and which may be exercised separately, independently or concurrently and more than once and in any order, and without any election of remedies to be deemed made, and without affecting the right of Beneficiary to exercise any other remedy hereunder or which Beneficiary may have in law, and without regard to other remedies then, theretofore or thereafter pursued or being pursued: (a) to declare any or all of the Obligations immediately due and payable; (b) to take immediate possession, management and control of the Property and to lease, operate, repair and maintain the same at the expense of Grantor and to perform such acts thereon or in connection therewith as Beneficiary may deem necessary or desirable; (c) to collect and receive any and all rents, issues and profits from the Property and to apply the same to the Obligations or to the repair or maintenance of the Property, or both; (d) to apply for and obtain, ex parte and without notice, the appointment of a receiver for the Property or of the rents, issues and profits thereof, or both, and to have such receivers appointed as a matter of right without regard to the solvency of any person or the adequacy of any security or the existence of waste with Grantor hereby specifically waiving any right to any hearing or notice of hearing prior to the appointment of a receiver, and to have sums received by such receivers, after deducting and paying costs and expenses of such receiverships, including attorneys' fees of Beneficiary, applied to the Obligations in such manner and order as Beneficiary may request; and (e) to foreclose this Deed of Trust through the Trustee or through the courts as the Beneficiary may desire and to become the purchaser of the Property at any foreclosure sale. If foreclosure is made through the Trustee, such foreclosure will be conducted in the manner provided by the laws of the State of Colorado.

The proceeds of any foreclosure sale will first be applied to (a) reimburse Beneficiary for reasonable costs and expenses of foreclosure and attorneys' fees, (b) to retire obligations secured by liens having priority over this Deed of Trust, and (c) the balance of the proceeds will be paid first to Beneficiary to pay the Obligations, with the surplus, if any, to be paid to the owner of the Property on the date of the foreclosure sale.

No member, partner, officer, director, shareholder, employee, or agent of Grantor, or any other third party, will have any personal liability for any amounts due under this Deed of Trust, and in the event of a default, Beneficiary will look solely to the collateral for payment of the Obligations, and will not be entitled to seek any deficiency from any third party.

Miscellaneous. (a) This Deed of Trust and each of its provisions will be binding upon the heirs, personal representatives, successors and assigns of Grantor and will inure to the benefit of the Trustee, the Beneficiary and her and its successors and assigns. (b) This Deed of Trust may be amended or modified only by an instrument in writing signed by the party charged with such amendment or waiver. (c) The Trustee may, upon production of the Note duly canceled, or a properly executed Request for Release of Deed of Trust without evidence of debt, and payment of all fees and costs by Grantor, release this Deed of Trust without further showing as to payment of the Obligations. (d) If there is more than one Grantor, all the terms and conditions of this Deed of Trust will apply to each of them. (e) The Trustee may release parts of the Property from the lien of this Deed of Trust upon the request of Beneficiary without impairing any rights or priority Beneficiary may have in the remainder of the Property or against Grantor. (f) Failure on the Beneficiary's part to exercise its rights in the event of any one default will not constitute a waiver of such rights in the event of any subsequent default. (g) Any notice and other

communications required or contemplated by this Deed of Trust will be in writing and will be delivered (and deemed given) as set forth in the Note, addressed to the parties at the respective addresses set forth in the Note or at such other address as may be designated in writing from time to time by the Grantor or the Beneficiary. (h) Grantor and any other party liable for the Obligations hereby consent to venue and jurisdiction in the District Court in and for the County of Boulder, State of Colorado, and in the United States District Court for the District of Colorado, and to service of process under Section 13-1-124(1)(A) and 13-1-125 Colorado Revised Statutes, as amended, in any action commenced in connection with this Deed of Trust or enforcement of the Obligations. (l) Time is of the essence of this Deed of Trust in all duties and Obligations to be performed by Grantor under this Deed of Trust.

[SIGNATURE PAGE TO FOLLOW]

SAMPLE

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust effective as of [DATE].

GRANTOR:

AGENCY, a Colorado nonprofit corporation *or housing authority*

By: _____

Name: _____

Title: Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was signed before me this _____ day of _____, 2022, by _____, as Executive Director of AGENCY, a Colorado nonprofit corporation *or housing authority*.

Witness my hand and official seal.

My commission expires _____

Notary Public

EXHIBIT E

RESTRICTIVE COVENANT RUNNING WITH THE LAND (HUMAN SERVICES)

After recording return to:

Boulder County Attorney's Office
Attention: Worthy Cause Attorney
P.O. Box 471
Boulder, CO 80306

This Restrictive Covenant Running with the Land ("Covenant") is made and entered into to be effective this _____ day of _____, 2022 by and between the County of Boulder, State of Colorado, a body corporate and politic ("County" and "Grantee") and AGENCY, a Colorado nonprofit corporation its successors and assigns ("Grantor").

Recitals

- A. This Covenant applies to the real property commonly known as ADDRESS, Colorado (the "Restricted Property"); the legal description of which is attached hereto as Exhibit A.
- B. Grantor will acquire, construct, renovate, improve, build fixtures/improvements upon, preserve, own, operate and manage a non-profit human services delivery program on the Restricted Property (the "Program").
- C. The County administers Worthy Cause IV pursuant to Board of County Commissioners' Resolution No. 2017-89 and 2017 County Ballot Issue 1A, "Worthy Cause 0.05% Countywide Sales and Use Tax Extension," which was adopted by the voters of the County of Boulder in November 2017.
- D. The purpose of Worthy Cause IV is to address the critical need for capital funding of nonprofit human services agencies and housing authorities within Boulder County that provide health, mental health, transitional and permanently affordable housing and other human services, including but not limited to childcare and early childhood education, basic needs such as food and clothing, and services for the elderly and people with disabilities.
- E. Worthy Cause IV funds are collected by and through a voter-approved 0.05% county-wide sales and use tax. Worthy Cause IV funds are awarded to select eligible nonprofit

organizations for capital purposes, including but not limited to acquisitions, construction, preservation, renovations, improvements, and reduction of capital debts.

- F. In Grantor's application for Worthy Cause IV funds, Grantor made certain representation to the County as to the type and extent of human services to be provided on the Restricted Property as an integral part of the Program.
- G. Based upon Grantor's representations, the County has determined to provide Grantor an allocation of Worthy Cause IV funds (the "Funds"), pursuant to a mutually executed Funding Agreement. Grantor will use the Funds as required by the Funding Agreement. The County has determined that investing in the Restricted Property to allow for the provision of human services thereon is consistent with the purpose of Worthy Cause IV and enhances the health, safety and welfare of Boulder County citizens.
- H. Grantor has agreed to permanently limit the use of the Restricted Property to non-profit human services programming through this Covenant and to assign the County the right to enforce compliance with this Covenant. The Boulder County community will benefit from the non-profit human services programming on the Restricted Property that this Covenant requires.
- I. Grantor desires to grant to the County a restrictive covenant running with the land over the Restricted Property in exchange for, and in consideration of, inter alia, the County providing the Funds to Grantor. It is the intent of both Parties that, during the term of this Covenant, this Covenant shall be binding on Grantor, its successors and assigns.
- J. Grantor and the County desire that this Covenant be recorded in the official land records of Boulder County to create covenants running with the land for the purpose of enforcing certain undertakings of Grantor in connection with Worthy Cause IV by restricting the use of the Restricted Property as set forth herein.
- K. Grantor, by entering into this Covenant, consents to County enforcement of the covenants, terms, and conditions of this Covenant.
- L. Grantor, under this Covenant, intends, declares and covenants that the restrictive covenants set forth herein governing the use of the Restricted Property shall be and are covenants running with the Restricted Property land for the term stated herein and binding upon all subsequent owners of the Restricted Property for such term.
- M. Grantor acknowledges that it has or will benefit from the Funds.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, Grantor and the County agree as follows:

1. Recording and Filing; Covenants to Run with the Land.

- a. This Covenant shall be placed of record in the real property records of Boulder County, Colorado. Except as otherwise provided herein, the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, Grantor and its successors and assigns, and the County and its successors and assigns, and all subsequent owners of the Restricted Property or any interest therein, for the period prescribed herein under Term of Restriction.
- b. Grantor hereby agrees that any and all requirements of the laws of Colorado to be satisfied in order for the provisions of this Covenant to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, including without limitation that this Covenant does not constitute an unreasonable restraint on alienation of the Restricted Property or any interests therein, and that any requirement of privity of estate are intended to be satisfied or, in the alternative, that an equitable servitude has been created to insure that the covenants, conditions, and restrictions herein run with the land.
- c. During the term of this Covenant, each and every contract, deed or other instrument hereafter executed conveying the Restricted Property or portion thereof shall expressly provide that such conveyance is subject to this Covenant, provided, however, the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Restricted Property, regardless of whether such contract, deed or other instrument hereafter executed conveying the Restricted Property or portion thereof provides that such conveyance is subject to this Covenant.
- d. Grantor agrees to limit the use of the Restricted Property for the term of this Covenant to operate the Program.

2. Representations, Covenants and Warranties of Grantor. Grantor covenants, represents and warrants the following to the County, as a material inducement to the County to execute this Covenant, which representations and warranties shall survive the execution and delivery of this Covenant and any termination of this Covenant.

- a. Grantor is duly organized under the laws of the State of Colorado, and is qualified to transact business under the laws of the State.

- b. To the extent required by law, Grantor is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Program and the Restricted Property.
 - c. Execution of this Covenant and performance thereof is within Grantor's duly authorized powers.
 - d. Any individual executing this Covenant for Grantor is authorized to do so.
 - e. Grantor is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to perform its obligations under the Covenant.
 - f. Grantor will have, on the date this Covenant is recorded, good and marketable title to the Restricted Property.
 - g. Grantor shall not discriminate on the basis of race, creed, color, gender, gender identity, age, marital status, national origin, disability or familial status, religion, sexual orientation, genetic information, or any other status protected by applicable federal, state, or local law in the administration and operation of the Program with respect to service delivery or employment of persons for the Program.
 - h. Grantor has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.
 - i. If Grantor becomes aware of any situation, event, or condition which would result in noncompliance of the Program or Grantor with Colorado law, Grantor shall promptly give written notice thereof to the County.
3. Term of Restrictions.
- a. Except as otherwise provided herein, this Covenant shall run with the land and shall restrict the use of the Restricted Property in accordance with the terms herein for a term of 99 years commencing on the date this Covenant is fully executed.
 - b. This Covenant shall terminate on the date the Restricted Property is acquired by foreclosure or deed in lieu of foreclosure unless the County determines that such acquisition is part of an arrangement with Grantor a purpose of which is such termination.
4. Compliance Monitoring. Grantor acknowledges that Boulder County may monitor the compliance by Grantor and the Program with the requirements of Colorado law. In addition to its specific agreements and undertakings in this Covenant, Grantor shall take or cause to be taken all other and further actions required of Grantor by the County in order to satisfy such monitoring requirement, which actions shall be designated in writing

by the County to Grantor not less than 60 days (or such other period as may be required by law) prior to the date by which such actions must first be taken.

5. Grantor Certifications and Reports. The County has the right to request any information or documentation related to the Program from the Grantor. Grantor shall provide any information, documents or certifications requested, from time to time, by the County with respect to the Program's operational and financial condition which the County reasonable deems necessary to substantiate Grantor's continuing compliance with the provisions of this Covenant and Colorado law.
6. Transfer Restrictions.
 - a. Grantor shall not sell, assign, convey, transfer or otherwise dispose of the Restricted Property or any portion thereof without the prior written consent of the County. Such consent shall be given provided that: (i) Grantor is in compliance with the requirements of this Covenant and of Colorado law; (ii) the proposed transferee of the Restricted Property evidences, to the reasonable satisfaction of the County, its willingness and ability to comply with the terms of this Covenant; and (iii) the County shall be paid a transfer fee, as determined from time to time by the County, not to exceed \$500.00, as adjusted for inflation from the effective date of this Covenant.
 - b. Grantor shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Covenant in any deed or other documents transferring any interest in the Restricted Property to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Covenant by any such transferee.
 - c. During the term of this Covenant, before the Grantor may sell the Restricted Property to a third party, the Grantor shall first offer the Restricted Property to the County following the procedures set forth in this paragraph. The County shall have thirty (30) days following the date Grantor first presents the County such offer to decide whether to try to negotiate an agreement for the purchase of the Restricted Property from Grantor. If the County desires to try to negotiate such an agreement, the County shall, within said thirty (30) day period, deliver to Grantor written notice thereof. Promptly thereafter, the Parties shall commence good faith negotiations exclusively with each other for a period not to exceed 120 days after the date the County gives the requisite notice to Grantor. If Grantor does not receive said notice within said thirty (30) day period, or if Grantor receives said notice within said period but the Parties do not enter into a legally binding, written agreement for the purchase and sale of the Restricted Property within said 120 day period, Grantor shall be free to enter into an agreement with a third party

on terms (considered as a whole) no more favorable to the third party than Grantor offered to the County.

- d. In the case of potential or actual foreclosure, the County shall reserve the option to acquire the Restricted Property. The Parties agree to the following provisions related to foreclosure or foreclosure prevention:
 - i. Grantor agrees that it will give immediate notice to the County upon the first to occur of: (a) the date any notice of foreclosure is provided to Grantor or any foreclosure is commenced against the Restricted Property, or (b) the date when Grantor becomes 21 days late in making a payment on any indebtedness encumbering the Restricted Property required to avoid foreclosure.
 - ii. At any time within 60 days after receipt of any notice described immediately above, the County may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure or needed in order to redeem the Restricted Property after foreclosure. Upon making any such payment, the County shall succeed to all rights of Grantor to the Restricted Property and shall assume all of Grantor's rights and obligations under the encumbrance underlying the foreclosure proceedings, subject to the terms of this Covenant. In such event Grantor shall forthwith quit the Restricted Property and relinquish possession thereof to the County.
 - iii. The County's rights above to assume all of Grantor's rights to the Restricted Property may only be exercised after the commencement of foreclosure proceedings with respect to Grantor's interest in the Restricted Property, which are not dismissed within 90 days.
 - iv. Grantor shall repay to the County all sums paid by the County in connection with the encumbrance and all other sums reasonably expended by the County in relation to the Restricted Property, plus three percent simple interest from each date of expenditure. This redemption may only occur within one of the following time periods from the date when the County made the first of any payments, whichever period is longer: twelve months; or the period of time allowed by C.R.S. § 38-38-302, or any successor statute, for redemption by the foreclosed-upon owner of real property that has been sold pursuant to the foreclosure of a deed of trust or mortgage. As of the date of such redemption, Grantor shall re-assume all of its rights and obligations under the encumbrance. At the end of redemption period set forth herein, if Grantor's interest has not been so redeemed, all right, title and interest of Grantor in the Restricted Property shall be extinguished, and Grantor shall execute a quit claim deed to the County to evidence transfer of title to the County.

7. Physical Maintenance/Management/Books/Records/Inspections.

- a. Grantor shall maintain the Restricted Property and any buildings thereon in a manner reasonably satisfactory to the County, taking into account applicable health, safety and building codes.
- b. Grantor is required to keep all records related to the Program for a minimum of the most recent five-year period. Records may be maintained in electronic format.

8. Enforcement.

- a. Grantor covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of this Covenant.
- b. The County shall be permitted access to, and entrance upon, the Restricted Property at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions herein contained. The County shall provide Grantor with five days' advance notice of its intention to enter the Restricted Property, except if the County determines there is an immediate need to take emergency action to prevent a violation of this Covenant.
- c. In the event of any failure of Grantor to comply with the provisions of this Covenant, the County shall inform Grantor by written notice of such failure and provide Grantor a period in which to correct such failure. If any such failure is not corrected to the satisfaction of the County within the period of time specified by the County, which shall be at least 90 days after the date any notice to Grantor is mailed, or within such further time as the County determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice the County may declare a default under this Covenant effective on the date of such declaration of default, and the County may (i) apply to any court, state or federal, for specific performance of this Covenant or an injunction against any violation of this Covenant; (ii) secure the appointment of a receiver to operate the Program in compliance with this Covenant; or (iii) exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct non-compliance with this Covenant.
- d. **Grantor and the County each acknowledges that the primary purpose of requiring compliance by Grantor with the restrictions provided in this Covenant is to assure compliance of the Program and Grantor with the language and purpose of Worthy Cause IV, as described and referenced in the above Recitals, AND BY REASON THEREOF, GRANTOR IN CONSIDERATION OF RECEIVING THE BENEFIT OF WORTHY CAUSE CAPITAL FUNDING HEREBY AGREES AND CONSENTS THAT THE COUNTY SHALL BE ENTITLED, FOR ANY BREACH OF**

THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY GRANTOR OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION, Grantor hereby further specifically acknowledging that the beneficiaries of Grantor's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

9. Miscellaneous.

- a. Notices. All notices to be given pursuant to this Covenant shall be in writing, signed by a person duly authorized to provide such notice, and shall be deemed given when sent by (i) first class registered or certified mail, return receipt requested, (ii) facsimile transmission, or (iii) electronic mail, read receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. All notices shall be deemed sufficient (i) upon receipt after dispatch by registered or certified mail, (ii) upon confirmation of receipt when transmitted by facsimile transmission, or (iii) upon confirmation of receipt when transmitted by electronic mail.

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

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

For the Agency: AGENCY
ADDRESS
ADDRESS
Attn: Executive Director

- b. Severability. The invalidity of any clause, part or provision of this Covenant shall not affect the validity of the remaining portions thereof.
- c. Governing Law. The laws of the State of Colorado shall govern the interpretation and enforcement of this Covenant. Any litigation that may arise between the Parties involving the interpretation or enforcement of the terms of this Covenant shall be initiated and pursued by the Parties in the Courts of the 20th Judicial

District of the State of Colorado and the applicable Colorado Appellate Courts or within courts of the United States District Court for the District of Colorado, if appropriate.

- d. Amendments. This Covenant may be amended from time to time by any written instruments signed by both the County and Grantor.
- e. Breach. Any waiver of a breach of this Covenant shall not be held to be a waiver of any other or subsequent breach of this Covenant. All remedies afforded in this Covenant shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.
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- j. Counterparts. This Covenant may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be a single agreement.

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

[Signature Pages Follow]

IN WITNESS WHEREOF, Grantor has caused this agreement to be signed by its respective duly authorized representative, as of the day and year first written above.

AGENCY, a Colorado nonprofit corporation

By: _____

Name: _____

Title: Executive Director

STATE OF COLORADO)

) ss.

COUNTY OF BOULDER)

The foregoing instrument was signed before me this _____ day of _____, 2022, by _____, as Executive Director of AGENCY, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires _____

Notary Public

EXHIBIT F

RESTRICTIVE COVENANT RUNNING WITH THE LAND (HOUSING)

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

RESTRICTIVE COVENANT RUNNING WITH THE LAND

This Restrictive Covenant Running with the Land ("Covenant") is made and entered into to be effective this [DAY] day of [MONTH], [YEAR] by and between the County of Boulder, State of Colorado, a body corporate and politic ("County" and "Grantee") and [AGENCY], a Colorado housing authority, its successors and assigns ("Grantor").

Recitals

- A. This Covenant applies to the real property commonly known as ADDRESS, Colorado (the "Restricted Property"); the legal description of which is attached hereto as Exhibit A.
- B. Grantor will acquire, construct, renovate, improve, build fixtures/improvements upon, preserve, own, operate and manage an affordable rental housing project on the Restricted Property (the "Project").
- C. The County administers Worthy Cause IV pursuant to Board of County Commissioners' Resolution No. 2017-89 and 2017 County Ballot Issue 1A, "Worthy Cause 0.05% Countywide Sales and Use Tax Extension," which was adopted by the voters of the County of Boulder in November 2017.
- D. The purpose of Worthy Cause IV is to address the critical need for capital funding of nonprofit human services agencies and housing authorities within Boulder County that provide health, mental health, transitional and permanently affordable housing and other human services, including but not limited to childcare and early childhood education, basic needs such as food and clothing, and services for the elderly and people with disabilities.
- E. Worthy Cause IV funds are collected by and through a voter-approved 0.05% county-wide sales and use tax. Worthy Cause IV funds are awarded to select eligible nonprofit

organizations for capital purposes, including but not limited to acquisitions, construction, preservation, renovations, improvements, and reduction of capital debts.

- F. In Grantor's application for Worthy Cause IV funds, Grantor made certain representation to the County as to the number of units on the Restricted Property intended to be Low-Income Units (hereinafter defined). Grantor desires to achieve a number of affordable housing and homelessness strategy goals shared by the County including preservation of existing housing stock, securing long term affordability, and integration of permanently affordable housing.
- G. Based upon Grantor's representations, the County has determined to provide Grantor an allocation of Worthy Cause IV funds (the "Funds"), pursuant to a mutually executed Funding Agreement. Grantor will use the Funds as required by the Funding Agreement. The County has determined that investing in the Restricted Property and the Project thereon is consistent with the purpose of Worthy Cause IV and enhances the health, safety and welfare of Boulder County citizens.
- H. Grantor has agreed to permanently limit the rents charged and income requirements for the occupancy of the Restricted Property through this Covenant and to assign the County the right to enforce compliance with this Covenant. The Boulder County community and subsequent residents will benefit from the rent limitations that this Covenant requires.
- I. Grantor desires to grant to the County a restrictive covenant running with the land over the Restricted Property in exchange for, and in consideration of, inter alia, the County providing the Funds to Grantor.
- J. Grantor and the County desire that this Covenant be recorded in the official land records of Boulder County to create covenants running with the land for the purpose of enforcing certain undertakings of Grantor in connection with Worthy Cause IV by regulating and restricting the use and occupancy of the Restricted Property as set forth herein.
- K. Grantor, by entering into this Covenant, consents to County enforcement of the occupancy restrictions and covenants, terms, and conditions of this Covenant.
- L. Grantor, under this Covenant, intends, declares and covenants that the restrictive covenants set forth herein governing the use and occupancy of the Project shall be and are covenants running with the Project land for the term stated herein and binding upon all subsequent owners of the Project for such term.
- M. Grantor acknowledges that it has or will benefit from the Funds.

N. Grantor hereby acknowledges and agrees that this Covenant is a deed restriction pursuant to C.R.S. 38-12-301(2)(b) that limits rent on the Restricted Property and is designed to provide affordable housing stock pursuant to a Funding Agreement between Grantor and the County.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, Grantor and the County agree as follows:

10. Recording and Filing; Covenants to Run with the Land.

- a. This Covenant shall be placed of record in the real property records of Boulder County, Colorado. Except as otherwise provided herein, the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, Grantor and its successors and assigns, and the County and its successors and assigns, and all subsequent owners of the Project or any interest therein, for the period prescribed herein under Term of Restriction.
- b. Grantor hereby agrees that any and all requirements of the laws of Colorado to be satisfied in order for the provisions of this Covenant to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, including without limitation that this Covenant does not constitute an unreasonable restraint on alienation of the Project or any interests therein, and that any requirement of privity of estate are intended to be satisfied or, in the alternative, that an equitable servitude has been created to insure that the covenants, conditions, and restrictions herein run with the land.
- c. During the term of this Covenant, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Covenant, provided, however, the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Project, regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Covenant.
- d. Grantor agrees to use the Restricted Property only for the Project.

11. Representations, Covenants and Warranties of Grantor. Grantor covenants, represents and warrants the following to the County, as a material inducement to the County to execute this Covenant, which representations and warranties shall survive the execution and delivery of this Covenant and any termination of this Covenant.

- a. Grantor is duly organized under the laws of the State of Colorado, and is qualified to transact business under the laws of the State.
- b. To the extent required by law, Grantor is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Project and the Restricted Property.
- c. Execution of this Covenant and performance thereof is within Grantor's duly authorized powers.
- d. Any individual executing this Covenant for Grantor is authorized to do so.
- e. Grantor is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to perform its obligations under the Covenant.
- f. Grantor will have, on the date this Covenant is recorded, good and marketable title to the premises constituting the Project.
- g. Grantor shall not discriminate on the basis of race, creed, color, gender, gender identity, age, marital status, national origin, disability or familial status, religion, sexual orientation, genetic information, or any other status protected by applicable federal, state, or local law in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.
- h. Grantor shall not permit the use of any residential rental unit for any purpose other than rental housing.
- i. Grantor has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.
- j. If Grantor becomes aware of any situation, event, or condition which would result in noncompliance of the Project or Grantor with Colorado law, Grantor shall promptly give written notice thereof to the County.
- k. If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, Grantor will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms hereof.
- l. During the term of this Covenant, Grantor shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under this Covenant with respect to such Low-Income Unit.

12. Term of Restrictions.

- a. Except as otherwise provided herein, this Covenant shall run with the land and be in effect for each building which is part of the Project for a term of 99 years commencing on the date this Covenant is fully executed.
- b. Except as provided in subsection (c) of this Section 3, this Covenant shall terminate on the date the Project or each building that is part of the Project is acquired by foreclosure or deed in lieu of foreclosure unless the County determines that such acquisition is part of an arrangement with Grantor a purpose of which is such termination.
- c. Notwithstanding the termination of occupancy restrictions and this Covenant under subsection (b) above, during the period of three years following any termination pursuant to subsection (b) above, Grantor shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under this Covenant with respect to such Low-Income Unit. This subsection (c) and the rights granted to the County and tenants of the Project to enforce this Covenant shall survive any such termination of this Covenant.

13. Occupancy Restrictions.

- a. Grantor represents and warrants that one hundred percent (100%) of the residential rental units in the Project (other than manager's units) shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is sixty percent (60%) or less of area median gross income.
- b. All of the foregoing residential rental units are collectively referred to herein as the "Low-Income Units", and, with respect to all of such Low-Income Units, "median gross income" shall be determined in accordance with the Internal Revenue Code (the "Code"). A unit is "rent-restricted" if the gross rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit based upon the income limitations set forth in subsection (a), all as determined in accordance with Section 42(g) of the Code.
- c. The determination of whether an individual or family is a Qualifying Tenant (that is, meets the income requirements of subsection (b) of this Section) shall be made at least annually on the basis of the income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Low-Income Unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (b) of this Section provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be a Low-Income Unit if after the determination of such increase, but prior to the next

determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.

- d. The form of lease to be utilized by Grantor in renting any unit in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification.

14. Compliance Monitoring. Grantor acknowledges that Boulder County may monitor the compliance by Grantor and the Project with the requirements of Colorado law. In addition to its specific agreements and undertakings in this Covenant, Grantor shall take or cause to be taken all other and further actions required of Grantor by the County in order to satisfy such monitoring requirement, which actions shall be designated in writing by the County to Grantor not less than 60 days (or such other period as may be required by law) prior to the date by which such actions must first be taken.

15. Grantor Certifications and Reports. The County has the right to request any information or documentation related to the Project from the Grantor. Grantor shall provide any information, documents or certifications requested, from time to time, by the County with respect to the Project's physical, operational and financial condition and residents which the County reasonably deems necessary to substantiate Grantor's continuing compliance with the provisions of this Covenant and Colorado law.

16. Transfer Restrictions.

- a. Grantor shall not sell, assign, convey, transfer or otherwise dispose of the Project or any building in the Project without the prior written consent of the County. Such consent shall be given provided that: (i) Grantor is in compliance with the requirements of this Covenant and of Colorado law; (ii) the proposed transferee of the Project evidences, to the reasonable satisfaction of the County, by its performance with respect to other government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of this Covenant; and (iii) the County shall be paid a transfer fee, as determined from time to time by the County, not to exceed \$500.00, as adjusted for inflation from the effective date of this Covenant. In no event shall Grantor dispose of any portion of any building in the Project to any person unless all of such building is disposed of to such person. For the purposes of this subsection, transfer of 50% or more of the ownership interests in Grantor shall be deemed a transfer of the Project.
- b. Grantor shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Covenant in any deed or other documents transferring any interest in the Project or in any building in the Project to any

other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Covenant by any such transferee.

- c. During the term of this Covenant, before the Grantor may sell the Restricted Property to a third party, the Grantor shall first offer the Restricted Property to the County following the procedures set forth in this paragraph. The County shall have thirty (30) days following the date Grantor first presents the County such offer to decide whether to try to negotiate an agreement for the purchase of the Restricted Property from Grantor. If the County desires to try to negotiate such an agreement, the County shall, within said thirty (30) day period, deliver to Grantor written notice thereof. Promptly thereafter, the Parties shall commence good faith negotiations exclusively with each other for a period not to exceed 120 days after the date the County gives the requisite notice to Grantor. If Grantor does not receive said notice within said thirty (30) day period, or if Grantor receives said notice within said period but the Parties do not enter into a legally binding, written agreement for the purchase and sale of the Restricted Property within said 120 day period, Grantor shall be free to enter into an agreement with a third party on terms (considered as a whole) no more favorable to the third party than Grantor offered to the County.
- d. In the case of potential or actual foreclosure, the County shall reserve the option to acquire the Restricted Property. The Parties agree to the following provisions related to foreclosure or foreclosure prevention:
 - i. Grantor agrees that it will give immediate notice to the County upon the first to occur of: (a) the date any notice of foreclosure is provided to Grantor or any foreclosure is commenced against the Restricted Property, or (b) the date when Grantor becomes 21 days late in making a payment on any indebtedness encumbering the Restricted Property required to avoid foreclosure.
 - ii. At any time within 60 days after receipt of any notice described immediately above, the County may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure or needed in order to redeem the Restricted Property after foreclosure. Upon making any such payment, the County shall succeed to all rights of Grantor to the Restricted Property and shall assume all of Grantor's rights and obligations under the encumbrance underlying the foreclosure proceedings, subject to the terms of this Covenant. In such event Grantor shall forthwith quit the Restricted Property and relinquish possession thereof to the County.
 - iii. The County's rights above to assume all of Grantor's rights to the Restricted Property may only be exercised after the commencement of

foreclosure proceedings with respect to Grantor's interest in the Restricted Property, which are not dismissed within 90 days.

- iv. Grantor shall repay to the County all sums paid by the County in connection with the encumbrance and all other sums reasonably expended by the County in relation to the Restricted Property, plus three percent simple interest from each date of expenditure. This redemption may only occur within one of the following time periods from the date when the County made the first of any payments, whichever period is longer: twelve months; or the period of time allowed by C.R.S. § 38-38-302, or any successor statute, for redemption by the foreclosed-upon owner of real property that has been sold pursuant to the foreclosure of a deed of trust or mortgage. As of the date of such redemption, Grantor shall re-assume all of its rights and obligations under the encumbrance. At the end of redemption period set forth herein, if Grantor's interest has not been so redeemed, all right, title and interest of Grantor in the Restricted Property shall be extinguished, and Grantor shall execute a quit claim deed to the County to evidence transfer of title to the County.

17. Physical Maintenance/Management/Books/Records/Inspections.

- a. Grantor shall maintain each building in the Project such that all units are suitable for occupancy, taking into account applicable health, safety and building codes, and otherwise in a manner reasonably satisfactory to the County.
- b. Grantor is required to keep records for each building in the Project intended for occupancy by persons of low income showing the following:
 - i. the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
 - ii. the percentage of residential rental units in the building that are Low-Income Units;
 - iii. the rent charged on each residential rental unit in the building (including any utility allowance);
 - iv. the number of occupants in each Low-Income Unit;
 - v. the Low-Income Unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
 - vi. the annual income certification of each Qualifying Tenant;
 - vii. documentation to support each Qualifying Tenant's income certification; and
 - viii. the character and use of the nonresidential portion of the building.
- c. Grantor is required to keep all records for each building for a minimum of five years after the due date (with extensions) for filing Grantor's federal income tax return for any year. Records may be maintained in electronic format.

18. Enforcement.

- a. Grantor covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of this Covenant.
- b. The County shall be permitted access to, and entrance upon, the Restricted Property at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions herein contained. The County shall provide Grantor with five days' advance notice of its intention to enter the Restricted Property, except if the County determines there is an immediate need to take emergency action to prevent a violation of this Covenant.
- c. In the event of any failure of Grantor to comply with the provisions of this Covenant, the County shall inform Grantor by written notice of such failure and provide Grantor a period in which to correct such failure. If any such failure is not corrected to the satisfaction of the County within the period of time specified by the County, which shall be at least 90 days after the date any notice to Grantor is mailed, or within such further time as the County determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice the County may declare a default under this Covenant effective on the date of such declaration of default, and the County may (i) apply to any court, state or federal, for specific performance of this Covenant or an injunction against any violation of this Covenant; (ii) secure the appointment of a receiver to operate the Project in compliance with this Covenant; or (iii) exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct non-compliance with this Covenant.
- d. **Grantor and the County each acknowledges that the primary purpose of requiring compliance by Grantor with the restrictions provided in this Covenant is to assure compliance of the Project and Grantor with the language and purpose of Worthy Cause IV, as described and referenced in the above Recitals, AND BY REASON THEREOF, GRANTOR IN CONSIDERATION OF RECEIVING THE BENEFIT OF WORTHY CAUSE CAPITAL FUNDING HEREBY AGREES AND CONSENTS THAT THE COUNTY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY GRANTOR OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION,** Grantor hereby further specifically acknowledging that the beneficiaries of Grantor's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

19. Miscellaneous.

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- o. Governing Law. The laws of the State of Colorado shall govern the interpretation and enforcement of this Covenant. Any litigation that may arise between the Parties involving the interpretation or enforcement of the terms of this Covenant shall be initiated and pursued by the Parties in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts or within courts of the United States District Court for the District of Colorado, if appropriate.
- p. Amendments. This Covenant may be amended from time to time by any written instruments signed by both the County and Grantor.

- q. Breach. Any waiver of a breach of this Covenant shall not be held to be a waiver of any other or subsequent breach of this Covenant. All remedies afforded in this Covenant shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.
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- s. Headings. Headings in this Covenant are for convenience or reference only and shall not be used in the interpretation or construction of this Covenant.
- t. Governmental Immunity. Nothing in this Covenant shall be construed in any way to be a waiver by the County of its immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.
- u. No Waiver; Remedies. No failure on the part of any of the Parties to exercise, and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Covenant shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy under this Covenant preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.
- v. Counterparts. This Covenant may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be a single agreement.
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document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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

[Signature Pages Follow]

SAMPLE

IN WITNESS WHEREOF, Grantor has caused this agreement to be signed by its respective duly authorized representative, as of the day and year first written above.

AGENCY, a Colorado *housing authority*

By: _____

Name: _____

Title: Executive Director

STATE OF COLORADO)

) ss.

COUNTY OF BOULDER)

The foregoing instrument was signed before me this _____ day of _____, 2022, by _____, as Executive Director of AGENCY, a Colorado *housing authority*.

Witness my hand and official seal.

My commission expires _____

Notary Public