



PUBLIC NOTICE OF SPECIAL MEETING

The Arvada Urban Renewal Authority (AURA) Board of Commissioners will hold a special board meeting via Zoom Webinar at **9:00 a.m.** on **Friday, September 13, 2024.**

Anyone wishing to attend virtually may register as follows:

Register in advance for this webinar:

https://arvadaco-gov.zoom.us/webinar/register/WN_kVeut9xVSc618fejQd2pAA

After registering, you will receive a confirmation email containing information about joining the webinar.

If you need assistance with the virtual webinar process or have questions or comments for the AURA Board regarding the agenda items, please contact cbriscoe@arvada.org prior to noon on September 12, 2024. A recording of the meeting will be posted on AURA's website following the webinar.

Agenda information is attached.

Carrie Briscoe

Carrie Briscoe
Deputy Director/Recording Secretary

POSTED: September 9, 2024



SPECIAL MEETING OF THE AURA BOARD OF COMMISSIONERS
Via Zoom Webinar
9:00 AM, September 13, 2024

AGENDA

SPECIAL MEETING – 9 a.m.

1. Call to Order
2. Moment of Reflections and Pledge of Allegiance
3. Roll Call of Members
4. Old Business
 - A. Resolution AR-24-18 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE SUBORDINATION AGREEMENT BETWEEN KEYBANK NATIONAL ASSOCIATION, RALSTON GARDENS, LLC AND THE ARVADA URBAN RENEWAL AUTHORITY
5. Adjournment

ARVADA URBAN RENEWAL AUTHORITY
AGENDA INFORMATION SHEET

Agenda No.: 4A
Meeting Date: September 13, 2024
Titles: Subordination Agreement between Arvada Urban Renewal Authority, Keybank, and Ralston Gardens, LLC (Affordable Housing)

ACTION PROPOSED: Approve

BACKGROUND: On May 29, 2020, Mile High Development and AURA entered into a Disposition and Development Agreement to construct 110 affordable housing units on the former Central Stores property with parking on a Walmart Outparcel.

During the October 4, 2023 Board Meeting, Mile High Development requested a reimbursement of \$1,053,401.11 for unanticipated costs in the development of the project. The Board determined it was appropriate to reimburse the developer \$215,190.12 of the requested funds.

At the January 3, 2024 meeting, the Board approved a loan agreement in the amount of \$215,190.12 at 1% simple interest due in 40 years since the project was not allowed to receive new capital after the partnership closed on its loan in May 2023.

INFORMATION ABOUT THE ITEM: Keybank National Association is requesting that AURA subordinate this loan to their senior loan

FINANCIAL IMPACT: Because of being in a subordinate lender position, AURA is at risk of not receiving payment of this loan should the borrower default and there are not enough funds to repay all lenders.

STAFF RECOMMENDATION: Approval of the Subordination Agreement between Arvada Urban Renewal Authority, Ralston Gardens LLC (Mile High Development), and Keybank National Association (senior lender).

SUGGESTED MOTION: I move that Resolution AR-24-02, A Resolution of the Board of Commissioners of the Arvada Urban Renewal Authority Approving the Loan Agreement between Arvada Urban Renewal Authority and Ralston Gardens LLC.

RESOLUTION AR-24-18

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE SUBORDINATION AGREEMENT BETWEEN KEYBANK NATIONAL ASSOCIATION, RALSTON GARDENS, LLC AND THE ARVADA URBAN RENEWAL AUTHORITY

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY, THAT:

Section 1. The Subordination Agreement between Keybank National Association, Ralston Gardens, LLC, and the Arvada Urban Renewal Authority, attached hereto as **Exhibit A**, is hereby approved, and the Chair is authorized to execute the same on behalf of the Authority.

DATED this ___ day of _____, 2024.

Paul Bunyard, Chair

Recording Secretary

APPROVED AS TO FORM

Hilary Graham, Legal Counsel

----- [Space Above This Line For Recording Data] -----

AFTER RECORDING RETURN TO:

David M. Lewis, Esq.
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114

**SUBORDINATION AGREEMENT
(Affordable)**

This SUBORDINATION AGREEMENT (this “**Agreement**”) dated as of September __, 2024 is executed by and among (i) **KEYBANK NATIONAL ASSOCIATION**, a national banking association (“**Senior Lender**”), (ii) **ARVADA URBAN RENEWAL AUTHORITY**, a body corporate and politic of the State of Colorado (“**Subordinate Lender**”), and (iii) **RALSTON GARDENS LLC**, a Colorado limited liability company (“**Borrower**”).

RECITALS:

A. Pursuant to that certain Construction Loan Agreement June 13, 2023, executed by and between Borrower and Senior Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Loan Agreement**”), Senior Lender has made a loan to Borrower in the original principal amount of \$26,772,358 (the “**Senior Loan**”), as evidenced by that certain Promissory Note dated June 13, 2023, executed by Borrower and made payable to the order of Senior Lender in the amount of the Senior Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Note**”).

B. In addition to the Senior Loan Agreement, the Senior Loan and the Senior Note are also secured by a certain Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing dated as of June 13, 2023 (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Security Instrument**”), encumbering the property described in the Senior Security Instrument as the “**Mortgaged Property.**”

C. Borrower has requested Senior Lender to permit that certain unsecured subordinate loan in the amount of \$215,190.12 (the “**Subordinate Loan**”) from Subordinate Lender to Borrower.

D. Senior Lender has agreed to permit the Subordinate Loan subject to all of the conditions contained in this Agreement.

AGREEMENTS:

NOW, THEREFORE, in order to induce Senior Lender to permit the Subordinate Loan to Borrower, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

1. Recitals.

The recitals set forth above are incorporated herein by reference.

2. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Affiliate**” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by, under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

“**Borrower**” means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Mortgaged Property after the date of this Agreement.

“**Business Day**” means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Senior Lender is not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

“**Condemnation Action**” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

“**Control**” (including with correlative meanings, the terms “Controlling,” “Controlled by” and “under common Control with”), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or operations of such entity, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

“Default Notice” means: (a) a copy of any written notice from Senior Lender to Borrower and Subordinate Lender stating that a Senior Loan Default has occurred under the Senior Loan Documents; or (b) a copy of the written notice from Subordinate Lender to Borrower and Senior Lender stating that a Subordinate Loan Default has occurred under the Subordinate Loan Agreement. Each Default Notice shall specify the default upon which such Default Notice is based.

“Person” means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

“Senior Lender” means the Person named as such in the first paragraph on Page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement.

“Senior Loan Default” means the occurrence of an “Event of Default” as that term is defined in the Senior Loan Documents.

“Senior Loan Documents” means the Senior Security Instrument, the Senior Note, the Senior Loan Agreement, and all other “Loan Documents” as that term is defined in the Senior Loan Agreement.

“Subordinate Lender” means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Agreement” means the Loan Agreement dated as of January 3, 2024 by and between Borrower and Subordinate Lender.

“Subordinate Loan Default” means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Agreement to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Agreement for curing the default.

3. Permission to Place Mortgage Lien Against Mortgaged Property.

Intentionally Deleted.

4. Borrower’s and Subordinate Lender’s Representations and Warranties.

(a) Subordinate Loan Agreement.

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

The Subordinate Loan is evidenced by the Subordinate Loan Agreement. The indebtedness evidenced by the Subordinate Loan Agreement is and shall be subordinate in right of payment to

the prior payment in full of the indebtedness evidenced by those two certain Promissory Notes (and any schedules) dated as of June 13, 2023 in the aggregate principal amount of \$26,772,358.00, executed by Ralston Gardens LLC, and payable to the order of KeyBank National Association (“Senior Lender”), to the extent and in the manner provided in this Agreement. The rights and remedies of the Subordinate Lender and each assignee of the Subordinate Loan Agreement are subject to the restrictions and limitations set forth in this Agreement. Each subsequent assignee of Subordinate Lender’s rights under the Subordinate Loan Agreement shall be deemed, by virtue of such party’s acquisition of Subordinate Lender’s rights thereunder, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Subordinate Lender under this Agreement.

(b) Relationship of Borrower to Subordinate Lender and Senior Lender.

Subordinate Lender is not an Affiliate of Borrower and is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

(c) Term.

The term of the Subordinate Loan does not end before the stated term of the Senior Note.

(d) Subordinate Loan Agreement.

The executed Subordinate Loan Agreement is substantially in the same form as that submitted to, and approved by, Senior Lender prior to the date of this Agreement.

5. Deliveries.

Borrower shall submit the following items to Senior Lender the later of (a) ten (10) Business Days after the date on which the proceeds of the Subordinate Loan are disbursed to Borrower, and (b) the effective date of the Senior Loan Documents:

(1) Title Policy Endorsement.

An endorsement to the policy of title insurance insuring the lien of the Senior Security Instrument which insures that (A) there are no liens or other encumbrances affecting the Mortgaged Property, other than “Permitted Encumbrances” (as defined in the Senior Security Instrument), and (B) this Agreement has been recorded among the applicable land records.

(2) Certification.

A certification from Borrower and Subordinate Lender to Senior Lender that the Subordinate Loan Agreement does not contain any changes from the Subordinate Loan Agreement submitted to, and approved by, Senior Lender prior to the date of this Agreement.

(3) Subordinate Loan Agreement.

A fully copy of the executed Subordinate Loan Agreement, certified by Borrower to be true, correct and complete.

6. Terms of Subordination.

(a) Agreement to Subordinate.

Senior Lender and Subordinate Lender agree that (1) the indebtedness evidenced by the Subordinate Loan Agreement is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the Indebtedness evidenced by the Senior Loan Documents, and (2) the terms, covenants and conditions of the Subordinate Loan Agreement are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (A) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Loan Documents, or (B) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

(b) Subordination of Subrogation Rights.

Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Agreement, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

(c) Payments Before Senior Loan Default.

Until Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Agreement.

(d) Payments After Senior Loan Default.

Borrower agrees that, after it receives a Default Notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Agreement (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums owing under the Subordinate Loan Agreement) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a Default Notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Agreement (including but not

limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums owing under the Subordinate Loan Agreement) without Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 6 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 6(d).

(e) Remitting Subordinate Loan Payments to Senior Lender.

If, after Subordinate Lender receives a copy of any Default Notice from Borrower in accordance with Section 6(d), Subordinate Lender receives any payments under the Subordinate Loan Agreement, Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 6, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Loan Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Notice of Payment from Other Persons.

Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender's receipt from any Person other than Borrower of a payment with respect to Borrower's obligations under the Subordinate Loan Agreement, promptly after Subordinate Lender obtains knowledge of such payment.

(g) Agreement Not to Commence Bankruptcy Proceeding.

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender's prior written consent.

7. Default Under Subordinate Loan Agreement.

(a) Notice of Subordinate Loan Default and Cure Rights.

Subordinate Lender shall deliver to Senior Lender a Default Notice within five (5) Business Days in each case where Subordinate Lender has given a Default Notice to Borrower. Failure of Subordinate Lender to send a Default Notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Agreement, subject to the provisions of this Agreement. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within sixty (60) days following the date of such notice. All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.

If a Subordinate Loan Default occurs and is continuing, Subordinate Lender agrees that, without Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property or exercise any other rights or remedies it may have under the Subordinate Loan Agreement, including, but not limited to accelerating the Subordinate Loan (and enforcing any "due on sale" provision, if any, included in the Subordinate Loan Agreement), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder.

(c) Cross Default.

Borrower and Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received a Default Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that Senior Lender shall not be required to return or otherwise credit for the benefit of Borrower any default rate interest or other default related charges or payments received by Senior Lender during such Senior Loan Default.

8. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

The Borrower shall deliver to Subordinate Lender a copy of any Default Notice received from Senior Lender within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of the Borrower to send a copy of such Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender's rights and remedies under

the Senior Loan Documents, subject to the provisions of this Section 8(a), nor shall such failure constitute a default by Senior Lender under this Agreement. Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default within sixty (60) days following the date of such Default Notice or the date on which Subordinate Lender otherwise acquires actual knowledge of Senior Loan Default; provided, however, that Senior Lender shall be entitled during such sixty (60) day period to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the Subordinate Loan Agreement.

(b) Cross Default.

Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Agreement, a Senior Loan Default shall not constitute a default under the Subordinate Loan Agreement (if no other default has occurred under the Subordinate Loan Agreement) until either (1) Senior Lender has accelerated the maturity of the Senior Loan, or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Agreement, Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Agreement, subject to the restrictions and limitations of this Agreement. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Subordinate Lender, any default under the Subordinate Loan Agreement arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

9. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Agreement and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender (if any) in the Mortgaged Property; (b) the timing of the exercise of remedies by Senior Lender and Subordinate Lender under the Senior Loan Documents and the Subordinate Loan Agreement, respectively; and (c) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed

to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Agreement; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

10. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Agreement and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Agreement covering the same subject matter:

(a) Protection of Security Interest.

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Agreement, except that Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 8(a) and advance funds pursuant to the Subordinate Loan Agreement for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Agreement.

(b) Condemnation or Casualty.

Following the occurrence of (1) a Condemnation Action, or (2) a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "**Casualty**"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Agreement or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Condemnation Action or Casualty; and

(B) all proceeds received or to be received on account of a Condemnation Action or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the

principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Agreement, provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds, provided further, however, that in the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, shall prevail.

(c) Insurance.

Subordinate Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Subordinate Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(d) No Modification of Subordinate Loan Agreement.

Borrower and Subordinate Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any amendment of the Subordinate Loan Agreement or assignment of Subordinate Lender's interest in the Subordinate Loan without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

11. Modification or Refinancing of Senior Loan.

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Loan Agreement, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note loan agreement, the mortgage securing the refinance note, all documents

evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

12. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

13. Reinstatement.

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

14. Notices.

(a) Process of Serving Notice.

All notices under this Agreement shall be:

- (1) in writing and shall be:
 - (A) delivered, in person;
 - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
 - (C) sent by overnight courier; or
 - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at the address(es) below the signature block, as applicable; and
- (3) deemed given on the earlier to occur of:
 - (A) the date when the notice is received by the addressee; or
 - (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the

United States Postal Service or any express courier service.

(b) Change of Address.

Any party to Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Agreement.

(c) Receipt of Notices.

Senior Lender, Subordinate Lender or Borrower shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

15. General.

(a) Assignment/Successors.

This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors, transferees and assigns of Borrower, Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Senior Lender.

(b) No Partnership or Joint Venture.

Senior Lender's permission for the placement of the Subordinate Loan does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent.

Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances.

Subordinate Lender, Senior Lender and Borrower each agrees, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Loan is subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

(e) Amendment.

This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law.

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Agreement shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

(g) Severable Provisions.

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term.

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (1) the payment in full of the principal of, interest on and other amounts payable under the Senior Loan Documents; (2) the payment in full of the principal of, interest on and other amounts payable under the Subordinate Loan Agreement, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 6 hereof; or (3) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Loan Documents.

(i) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

(j) Sale of Senior Loan.

Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Senior Loan Documents) may be sold one or more times without prior notice to Borrower.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

SENIOR LENDER:

KEYBANK NATIONAL ASSOCIATION
a national banking association

By: _____
Name: _____
Title: _____

Address: 127 Public Square
Cleveland, Ohio 44114

With a copy to:
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114

[ACKNOWLEDGMENT]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____, 2024 by _____ (name of officer or agent, title of officer or agent) of KEYBANK NATIONAL ASSOCIATION, a national banking association, on behalf of the banking association.

Notary Public

Print Name: _____

My commission expires: _____

SUBORDINATE LENDER:

ARVADA URBAN RENEWAL AUTHORITY

By: _____

Name: _____

Title: _____

Address: _____

STATE OF _____)

)

SS:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____,
2024 by _____ (name of officer or agent, title of
officer or agent) of Colorado Housing Finance Authority.

This is an acknowledgement clause. No oath or affirmation was administered to the signor.

Notary Public

BORROWER:

RALSTON GARDENS LLC, a Colorado limited liability company

By: Ralston Gardens Manager LLC, a Colorado limited liability company, its Managing Member

By: Brinshore TL, LLC, an Illinois limited liability company, its Manager

By: Brinshore Development, L.L.C., an Illinois limited liability company, its Managing Member

By: Brint Development, Inc., an Illinois corporation, its Member

By: _____
David B. Brint, President

and

By: Mile High Affordable Housing, LLC, a Colorado limited liability company, its Manager

By: Mile High Realty Advisors Corp., a Colorado corporation, its Manager

By: _____
George L. Thorn, President

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by David B. Brint, the President of Brint Development, Inc., an Illinois corporation, the Member of Brinshore Development, L.L.C., an Illinois limited liability company, the Managing Member of Brinshore TL, LLC, an Illinois limited liability company, the Manager of Ralston Gardens Manager LLC, a Colorado limited liability company, the Managing Member of Ralston Gardens LLC, a Colorado limited liability company, on behalf of the limited liability company.

This is an acknowledgement clause. No oath or affirmation was administered to the signor.

Notary Public

My Commission Expires: _____

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by George L. Thorn, the President of Mile High Realty Advisors Corp., a Colorado corporation, the Manager of Mile High Affordable Housing, LLC, a Colorado limited liability company, the Manager of Ralston Gardens Manager LLC, a Colorado limited liability company, the Managing Member of Ralston Gardens LLC, a Colorado limited liability company, on behalf of the limited liability company.

This is an acknowledgement clause. No oath or affirmation was administered to the signor.

Notary Public

My Commission Expires: _____