

After Recording, Return To:

Colorado Housing and Finance Authority  
1981 Blake Street  
Denver, CO 80202  
Attn: Legal Operations

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**LANDLORD CONSENT, ESTOPPEL, AND AGREEMENT**

This LANDLORD CONSENT, ESTOPPEL AND AGREEMENT (this "**Agreement**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023 by and among the BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, STATE OF COLORADO ("**Landlord**"), ROSE MOUNTAIN TOWNHOMES, LP, a Colorado limited partnership ("**Tenant**"), and COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado ("**Lender**"). Landlord, Tenant and Lender are collectively referred to as the "**Parties**", and individually as a "**Party**".

A. Landlord is the owner of certain real property located in unincorporated Archuleta County, Colorado, more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes (the "**Premises**").

B. By that certain Ground Lease, dated April 2, 2019, recorded on April 3, 2019, under Reception No. 21901774, in the real estate records of the Clerk and Recorder of the County of Archuleta, Colorado (the "**Records**"), that certain First Amendment to Ground Lease, recorded on April 13, 2019, under Reception No. 21903294, in the Records, and that certain Second Amendment to and Assignment of Ground Lease dated September 16, 2020, recorded on September 24, 2020, under Reception No. 22005714, in the Records, Landlord has leased the Premises to Tenant (said lease, along with all supplements, addendums, amendments, options, rights, renewals, extensions, and modifications thereof, are hereinafter collectively referred to as the "**Lease**").

C. Tenant desires to grant to Lender a first lien leasehold deed of trust (including all modifications and increases thereto, the "**Senior Leasehold Deed of Trust**") encumbering its entire interest in the Lease and Premises, which Leasehold Deed of Trust will secure a loan from Lender to Tenant in the principal amount of One Million Seventy-Five Thousand and No/100 Dollars (\$1,075,000.00) (including all modifications and increases thereto, the "**Senior Loan**"), which Senior Loan will be used to finance the Premises. Tenant also desires to grant to Lender a second lien leasehold deed of trust (including all modifications and increases thereto, the "**CMF Leasehold Deed of Trust**") encumbering its entire interest in the Lease and Premises, which Leasehold Deed of Trust will secure a loan from Lender to Tenant in the principal amount of Six

Hundred Thousand and No/100 Dollars (\$600,000.00) (including all modifications and increases thereto, the "**CMF Loan**"), which CMF Loan will be used to finance the Premises. Collectively the Senior Loan and CMF Loan are the "**Loans**". All documents securing the loans including the Senior Leasehold Deed of Trust and the CMF Leasehold Deed of Trust are the "**Loan Documents**".

D. In addition to the Senior Leasehold Deed of Trust and the CMF Leasehold Deed of Trust, Lender will also secure Tenant's obligations under the Loans with a first lien security interest in and to all of Tenant's assets (collectively, the "**Personal Property**"), some or all of which such Personal Property will, or may, hereafter be located on the Premises.

**NOW, THEREFORE**, in consideration of the financial accommodations extended by Lender to Tenant, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE I**  
**Agreements Regarding the Lease**

1. Landlord and Tenant hereby make the following certifications and agreements to, and in favor of, Lender:

A. All of the facts recited in the above "Whereas" clauses relating to the Lease are true and correct, and all of the facts recited in the above "Whereas" clauses, including those concerning the Lease, form a part of this Agreement.

B. The Lease is in full force and effect on this date. All conditions precedent to the effectiveness of the Lease have been satisfied or waived.

C. The Lease has a primary term of ninety-nine (99) years from April 2, 2019 (as that term is defined in Section 3 of the Lease).

D. Rent is paid in full as of the date hereof and there is no deferred rent, either payable or accrued, under the Lease as of the date hereof, or any additional rent or charge that has been billed to Tenant and is overdue.

E. To the best of Landlord's and Tenant's knowledge, after reasonable inquiry, neither Landlord nor Tenant are in default under the terms and conditions of the Lease nor is there any event or condition which with the passing of time or the giving of notice, or both, would constitute an event of default on the part of Landlord or Tenant.

F. The Lease has not been assigned, modified, amended, supplemented or changed.

G. The Lease will not be amended, modified, cancelled, relinquished,

surrendered, or terminated by any Party without the prior written consent of Lender. However, notwithstanding the foregoing, the Lease may be terminated by Landlord upon breach thereof by Tenant, subject to Lender's right to notice of default and opportunity to cure, as set forth below.

H. (i) Landlord and Tenant will give Lender notice of any material default under the Lease. Landlord will not terminate the Lease without giving Lender written notice of Landlord's intention to terminate the Lease, and allowing Lender sixty (60) days from the date of such notice (the "**Cure Period**") to cure any such perceived default; provided, however, that in the case of any default that cannot with diligence be cured within the Cure Period, if Lender shall proceed promptly to initiate measures to cure such default and thereafter prosecute the curing of such default with diligence and continuity, the Cure Period shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity. No default and no termination of the Lease in connection therewith shall be effective unless notice and opportunity to cure has been given to Lender in accordance with the terms of this Agreement. As used herein, a "material default" will mean a default which, if not cured within the time allowed by the Lease (if any), will result in the Landlord taking action to (a) dispossess Tenant from the Premises, (b) terminate the Lease, and/or (c) enforce its other default remedies under the Lease.

(ii) In the event that the default which was the basis for a notice received by Lender shall be cured, whether by Lender, Tenant, or any other person, or shall be waived by Landlord, or otherwise cease to exist, the said notice of default shall be rendered void, and the Lease shall be deemed fully restored.

(iii) Any payment made or act done by Lender to cure any default under the Lease shall not constitute an assumption of the Lease. Notwithstanding the foregoing, and notwithstanding any effort that Lender may hereafter make (or not make) to cure any default, the Landlord and Tenant agree that Lender shall have no obligation to cure any such default.

I. In the event that any default under the Lease is not capable of or subject to cure, the Lease will not thereafter be terminated provided that Lender, within the Cure Period, (i) acquires, sells or assigns the interest of Tenant under the Lease by foreclosure or deed in lieu and in accordance with the documents executed by Tenant in connection with the Loans and/or as otherwise allowed by law; and (ii) cures, or causes to be cured, all defaults capable of being cured. If the original lease terminates because of default by the Tenant that is not curable by Lender, Lender shall have the right to request a new Lease on substantially the same terms and conditions as the Lease, subject to all rights and benefits that Lender is entitled to hereunder. Any mortgage placed by the Landlord upon its fee interest in the Premises shall be subject and subordinate to the new Lease executed in replacement thereof and to all space leases, and Landlord shall obtain appropriate subordination agreements from the holder of any such mortgage as necessary in form

reasonably acceptable to Lender. If the Loans or any of Tenant's obligations under the Loan Documents are outstanding at the time of a new Lease, Lender shall have a thirty (30) day period to exercise any renewal or purchase option stated in the Lease, if the Tenant fails to do so on or before the deadline set forth in the Lease.

J. Landlord agrees, and Tenant acknowledges, that any lien, right of distraint or levy, security interest or other interest which the Landlord may now have, or hereafter acquire, in any of the Personal Property for unpaid rent or otherwise, whether by virtue of the Lease, landlord-tenant relationship, statute, or otherwise are, and shall be, subordinate in all respects to any security interest(s) now or hereafter held by Lender in the Personal Property.

K. Landlord consents to Tenant's encumbrance of Tenant's leasehold and other interests in the Premises by the Leasehold Deed of Trust, and various other loan documents executed in connection with the Loans, and any and all extensions, increases, renewals and amendments thereto as they may take place in the future in favor of Lender to secure Tenant's obligations under the Loans.

L. Without the further consent of Landlord, in accordance with the documents executed in connection with the Loans and/or as otherwise allowed by law, Lender or its designee may acquire the interest of Tenant under the Lease and Premises by (i) judicial or non-judicial foreclosure, or (ii) assignment or deed in lieu of foreclosure. Neither the foreclosure of the Leasehold Deed of Trust (whether by judicial proceedings or by virtue of any power of sale contained in said Leasehold Deed of Trust), nor any conveyance of the leasehold estate created by the Lease by Tenant to the Lender or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall constitute a default under the Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the Lender or its designee, as applicable, as the new "Lessee" under the Lease.

M. In the event Lender or its designee acquires the Tenant's interest in the Lease and Premises, as described above ("**Lender's Leasehold Interest**"), Lender or its designee may, with the consent of Landlord, as appropriate, assign or sublease such leasehold estate, and any such purchaser or assignee may also assign or sublease such leasehold estate. Lender or its designee shall be personally liable only for the obligations of the Tenant under the Lease arising during the period of time that Lender or its designee holds title to the leasehold estate created thereby. Landlord will not require that Lender remain obligated under the Lease as a condition to its consent to any assignment.

N. Upon an assignment of Lender's Leasehold Interest by Lender (or its designee) to another party, Lender (or its designee) shall have no liability under the Lease for obligations arising after said assignment. Notwithstanding anything herein to the contrary, in the event Lender shall have notified Landlord in writing of Lender's intent to surrender the Premises to Landlord, all obligations of Lender under the Lease after the date of such surrender shall terminate.

O. The Personal Property may be installed in or located on the Premises and is not and shall not be deemed to be a fixture or part of the real estate but shall at all times be considered personal property.

P. Lender may be added to the "Loss Payable Endorsement" and/or "Lender" clause of any and all insurance policies required to be carried by Tenant under the Lease, or otherwise.

Q. Landlord has not received written notice of (i) any pending eminent domain proceedings, (ii) any governmental or judicial action, (iii) any violation of law or regulation, against Landlord's interest in the Premises.

R. Neither Tenant nor any affiliate of Tenant has any direct or indirect ownership interest in Landlord or any affiliate of Landlord.

## **ARTICLE II**

### **Miscellaneous Additional Agreements**

1. Notwithstanding anything in the Lease to the contrary, Landlord and Tenant agree as follows:

A. All insurance proceeds paid by any insurer for damage to the improvements located on the Premises shall be paid directly to Lender to (i) satisfy the Loans and other debt secured by the Leasehold Deed of Trust, or (ii) repair the improvements, as determined by Lender in its sole discretion; provided, however, that if the Loans shall be fully satisfied, any balance remaining shall be paid to Tenant.

B. All condemnation proceeds and awards allocated to the improvements on the Premises and/or Tenant's leasehold interest in the Premises shall be paid directly to Lender to satisfy the Loans and other debt secured by the Leasehold Deed of Trust; provided, however, that if the Loans shall be fully satisfied, any balance remaining shall be paid to Tenant.

C. Landlord and Tenant shall give Lender notice of any arbitration or condemnation proceedings, or of any pending adjustment or insurance claims, and Lender shall have the right to intervene therein and be made a party to such proceedings. The Parties do hereby consent to such intervention. In the event that Lender shall not elect to intervene or become a party to the proceedings, Lender shall nevertheless receive notice, and a copy, of any award or decision made in connection therewith.

2. The leasehold shall not merge with the fee interest in all or any portion of the Premises, notwithstanding the ownership of the fee and the leasehold by the same person(s) or entity(ies) without the prior written consent of Lender, which consent shall be given or withheld in Lender's sole discretion.

3. Lender, or its agents, employees or other representatives, may enter upon the Premises at any time for the purpose of inspecting, repossessing, removing, selling, conducting a public auction or private sale with respect to or otherwise dealing with the Personal Property. This license shall be irrevocable and shall continue from the date Lender enters the Premises for as long as Lender deems necessary. However, in the event there is a material default under the Lease, Lender's entry upon the Premises will not exceed a period of sixty (60) days after notice is made of such default under the Lease, as required by this Agreement.

4. Lender may terminate, sell, transfer or assign its rights and obligations under the Loan Documents, or modify or amend any of the terms of the Loan Documents at any time without Landlord's consent. Failure to give notice of any such termination, sale, transfer, assignment, modification or amendment shall not affect the validity of such action, Lender's rights to exercise remedies under the Deed of Trust or any of the other Loan Documents, nor Lender's rights hereunder.

5. The Parties agree to execute all reasonable documents necessary to carry out the provisions contained herein.

6. Any notice required or permitted hereunder or under applicable law shall be in writing and shall be deemed effective if either (1) hand delivered, (2) sent by certified U.S. mail, return receipt requested, postage prepaid, or (3) sent by overnight courier. All notices sent by certified U.S. mail and addressed as shown below shall be deemed received on the earlier of (i) the third day (excluding Saturdays, Sundays and legal holidays when the U.S. mail is not delivered) immediately following the date of deposit in the U.S. mail to the applicable address shown below, postage prepaid, or (ii) the date of actual receipt. All notices which are hand delivered or sent by overnight courier shall be deemed received on the day of delivery to the applicable address shown below. The address(es) shown below may be changed by any party by giving notice as provided above.

If to Landlord: Archuleta County Board of County Commissioners  
P.O. Box 1507  
Pagosa Springs, CO 81147  
Attention: County Administrator

If to Tenant: Rose Mountain Townhomes, LP  
503 South 8th Street  
PO Box 1463  
Pagosa Springs CO 81147  
Attention: Executive Director

With a copy to: Rose Mountain Townhomes, LP  
c/o Sleeping Indian LLC

328 Riverview Court  
Canon City, CO  
Attention: William L. Simpson

With a copy to: Alliant Tax Credit Fund 102, LP  
c/o Alliant Capital, Ltd.  
340 Royal Poinciana Way, Suite 305  
Palm Beach, FL 33480  
Attention: Brian Goldberg

If to Lender: Colorado Housing and Finance Authority  
1981 Blake Street  
Denver, CO 80202  
Attention: Legal Operations

With a copy to: Colorado Housing and Finance Authority  
1981 Blake Street  
Denver, CO 80202  
Attention: Director of Asset Management

7. Landlord represents and warrants that (a) Landlord is the sole and exclusive owner of the Premises, (b) Landlord has full authority to enter into and fully perform under this Agreement, and (c) Landlord's interest in the Premises is free and clear of all liens and encumbrances, contractual rights or claims, previous transfers or conveyances, or agreements to transfer or convey, except for the Lease and other matters of record previously approved by Lender.

8. Tenant represents and warrants that (a) Tenant has full authority to enter into and fully perform under this Agreement, (b) Tenant's interest in the Premises is free and clear of all liens and encumbrances, contractual rights or claims, previous transfers or conveyances, or agreements to transfer or convey, except the (i) the Lease, (ii) the Senior Leasehold Deed of Trust and the CMF Leasehold Deed of Trust, (iii) any other instrument executed in favor of Lender to secure the Loans, and (iv) the Deed of Trust in the amount of \$3,000,000.00 between the Tenant and the State of Colorado, by and through the Department of Local Affairs, for the benefit of the Division of Housing and the Deed of Trust in the amount of \$1,985,000.00 between the Tenant and the Landlord.

9. Lender and its agents and contractors will have full access to the Premises for purposes of exercising its rights hereunder, and/or under the various documents executed in connection with the Loans.

10. The Landlord executes this Agreement for the benefit and protection of the Lender with full knowledge that Lender is relying on this Agreement in making the Loans and entering into the Loan Documents.

11. This Agreement may be separately executed in any number of counterparts, each of which shall be an original.

12. Whenever the consent of any Party is required hereunder, or under the Lease, the Parties agree that such consent will not be unreasonably withheld, conditioned, or delayed.

13. A facsimile transmission, portable document format (pdf), or a copy, of the signature of any Party to this Agreement shall be considered valid and binding upon said Party. Any Party to this Agreement, as well as any third party, may rely upon such facsimile, pdf, or copy of the signature the same as if said signature were an original.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to the conflict of laws or principles thereof.

15. LANDLORD AND TENANT AGREE THAT ANY CONTROVERSY ARISING UNDER OR IN RELATION TO THIS AGREEMENT SHALL BE LITIGATED EXCLUSIVELY IN COLORADO. THE STATE AND FEDERAL COURTS AND AUTHORITIES SITTING IN THE CITY AND COUNTY OF DENVER, COLORADO, SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL CONTROVERSIES WHICH SHALL ARISE UNDER OR IN RELATION TO THIS AGREEMENT. LANDLORD AND TENANT IRREVOCABLY CONSENT TO SERVICE, JURISDICTION, AND VENUE OF SUCH COURTS FOR ANY SUCH LITIGATION AND WAIVE ANY OTHER VENUE TO WHICH THEY MIGHT BE ENTITLED BY VIRTUE OF DOMICILE, HABITUAL RESIDENCE OR OTHERWISE. HOWEVER, NOTHING HEREIN IS INTENDED TO LIMIT LENDER'S RIGHT TO BRING ANY SUIT, ACTION OR PROCEEDING RELATING TO MATTERS ARISING UNDER THIS ASSIGNMENT.

16. This Agreement will continue for so long as the Leasehold Deed of Trust shall remain unsatisfied of record or until written notice of satisfaction is given by the Lender.

17. This Agreement represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.

18. This Agreement shall be binding on, and shall inure to the benefit of, the Parties and their successors and assigns.

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be executed effective as of the date first mentioned above.

LANDLORD:

BOARD OF COUNTY COMMISSIONERS OF  
ARCHULETA COUNTY, STATE OF  
COLORADO

By: *Ronnie Maez*  
Ronnie Maez, Chairman



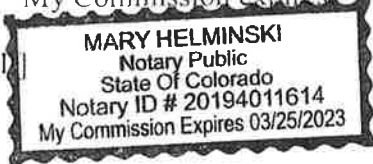
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Archuleta )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of February, 2023, by Ronnie Maez, as Chairman ~~of Chairman~~ of the Board of County Commissioners of Archuleta County, State of Colorado.

Witness my hand and official seal.

My Commission expires: 3-25-23

[SEAL]




*Mary Helminski*  
Notary Public

**TENANT:**

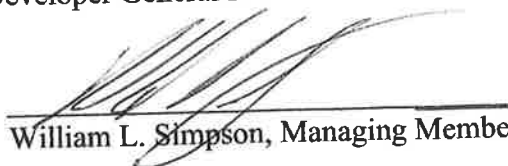
ROSE MOUNTAIN TOWNHOMES, LP, a Colorado limited partnership

By: Rose Mountain Townhomes, LLC, a Colorado limited liability company, its Authority General Partner

By: Archuleta County Housing Authority, a political subdivision of the State of Colorado, its Sole Member and Manager

By:   
Clifford Lucero, Chairman

By: Sleeping Indian LLC, a Colorado limited liability company, its Developer General Partner

By:   
William L. Simpson, Managing Member

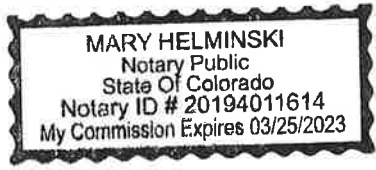
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Archuleta )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of February, 2023, by Clifford Lucero, as Chairman of Archuleta County Housing Authority, a political subdivision of the State of Colorado, as Sole Member and Manager of Rose Mountain Townhomes, LLC, a Colorado limited liability company, as Authority General Partner of Rose Mountain Townhomes, LP, a Colorado limited partnership.

Witness my hand and official seal.

My Commission expires: 3-23-23

[SEAL]



Mary Helminski  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Fremont )

The foregoing instrument was acknowledged before me this 17 day of February, 2023, by William L. Simpson, Managing Member of Sleeping Indian LLC, a Colorado limited liability company, as Developer General Partner of Rose Mountain Townhomes, LP, a Colorado limited partnership.

Witness my hand and official seal.

My Commission expires: June 08, 2024

[SEAL]



Notary Public

RAYNA GUNTER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID# 20164021768  
MY COMMISSION EXPIRES JUNE 08, 2024

**LENDER:**

COLORADO HOUSING AND FINANCE  
AUTHORITY, a body corporate and political  
subdivision of the State of Colorado

By: \_\_\_\_\_  
Jaime G. Gomez, Deputy Executive Director and  
Chief Operating Officer

STATE OF COLORADO                    )  
  ) ss.  
CITY AND COUNTY OF DENVER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2023, by Jaime G. Gomez, as Deputy Executive Director and Chief Operating Officer of Colorado  
Housing and Finance Authority, a body corporate and political subdivision of the State of  
Colorado.

Witness my hand and official seal.

(S E A L)

\_\_\_\_\_  
Notary Public  
My                    commission                    expires:  
\_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION

Parcel A:

A leasehold estate as created by that certain Lease Agreement executed by Board of County Commissioners of Archuleta County, Colorado, Landlord, and Archuleta County Housing Authority, Tenant, as referenced in the document entitled Ground Lease, which was recorded April 3, 2019 at Reception No. 21901774, First Amendment to Ground Lease, which was recorded June 13, 2019 at Reception No. 21903294 and Second Amendment to and Assignment of Ground Lease, which was recorded September 24, 2020 at Reception No. 22005714 for the term and upon and subject to all the provisions contained in said document, and in said Lease, as to the following described property:

Parcel 2Z-1, Fairway Land Trust Minor Subdivision Amendment 2021-01, County of Archuleta, State of Colorado.

Parcel B:

Those easement rights for roadway, parking, underground drainage, pedestrian and detention pond as defined and described in Declaration of Easements recorded September 24, 2020 at Reception No. 22005715, Archuleta County Records.

Also known as (for informational purposes only): 450 Hot Springs Boulevard, Pagosa Springs, Colorado 81147