When recorded, return to:
City Clerk
211 W. Aspen Avenue
Flagstaff, Arizona 86001

FUNDING AGREEMENT

URBAN LOFTS

2705 N Fourth St, Flagstaff, Arizona 86004

THIS FUNDING AGREEMENT (this "Agreement"), dated as of _____, 2026, is made and entered into by and between 2705 N 4th STREET LLC, a Wyoming limited liability company (the "Borrower"), and CITY OF FLAGSTAFF, ARIZONA, a municipal corporation of the State of Arizona (the "City").

R E C I T A L S

A. Proposition 442 was approved by the voters November 8, 2022, which authorized the City of Flagstaff to utilize $20 million ($20,000,000.00) in general obligation bond funds to create rental and ownership opportunities for Flagstaff residents, with one of its funding categories being, "Repurpose Existing Buildings into Rental Units."

B. The Adaptive Reuse Bond Program ("ARBP" or "Program") was approved by the City Council on September 2, 2025, as evidenced by City Resolution No. 2025-44, its purpose to provide loans to eligible for profit and nonprofit developers of rental housing to create new rental housing from existing buildings within the City, specifically to repurpose and rehabilitate existing buildings into new affordable rental units to house and serve residents at or below eighty percent (80%) area median income ("AMI") with a maximum household income of one hundred percent (100%) AMI.

C. The ARBP will be funded with three million dollars ($3,000,000.00) of the twenty million ($20,000,000) bond funds described in Recital A. For the purposes of the Program, "Adaptive Reuse" is defined as repurposing and/or rehabilitating any existing building for the creation of new affordable residential units.

D. The City made available the Program funds through an open call for applications in September 2025 and through its evaluation process identified Borrower to receive an award of funds from the ARBP ("ARBP Funds"), which will be in the form of a loan to Borrower.

E. Borrower has a fee simple interest in certain real property and improvements thereon located at 2705 N. 4th Street in Flagstaff, Arizona, more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "Property").

F. AXXO HOLDINGS, LLC, an Arizona limited liability company ("Applicant"), submitted an Application for grant of ARBP Funds on behalf of Borrower for development of the Property.

G. The City subject to the Borrower's agreement to and compliance with the terms and conditions of the ARBP award and the ARBP Funds documents, which include this Agreement, the Promissory Note, Deed of Trust (With Assignment of Rents and Security Agreement and Fixture Filing) ("Deed of Trust"), Declaration of Restrictive Covenants, and such other documents as the City in its sole discretion shall determine necessary, agrees to provide to Borrower a forgivable loan in the original principal amount of Six Hundred and Forty Thousand and 00/100 Dollars ($640,000.00) of ARBP Funds (the "Loan") for the construction of seventeen (17) residential units as further detailed in the Site Plan on file with the City (the "Improvements"), which will include sixteen (16) affordable units serving households at or below eighty percent (80%) AMI and no greater than one hundred percent (100%) AMI, and be known as Urban Lofts. The Land and the Improvements are referred to collectively hereafter as the "Development."

H. The Borrower and the City have negotiated the terms and conditions of, and wish to enter into, this Agreement in order to set forth the terms and conditions of the disbursement of the Loan and specific terms and conditions concerning the ARBP Funds as indicated herein.

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

AGREEMENT

1. INCORPORATION OF RECITALS. The above Recitals are true and correct and are incorporated into and made a part hereof.

2. DEFINITIONS. In addition to the terms defined in the Recitals, as used in this Agreement the terms listed below shall have the following meanings unless otherwise required by the context:

First Mortgagee: The issuer of the First Mortgage Loan, Foothills Bank, n.a. and any of its successors or assigns and any subsequent First Mortgagee entered into in accordance with the terms of this Agreement.

First Mortgage: The loan issued by Foothills Bank, n.a. to fund acquisition of the Property and secured by a Deed of Trust recorded on _____, 2026 instrument no. _____ in the official records of the Coconino County Recorder in consideration for funds used to acquire the Property for Adaptive Reuse.

Completion Date: The Completion Date shall mean such date when the City of Flagstaff has issued a Certificate of Occupancy for the Project, which shall occur on or before February 5, 2028 (no later than 24 months of the Borrower receiving notification of reservation of Program funds).

Construction Contract: The contract between the Borrower and the General Contractor for the construction, rehabilitation, and renovation of the Improvements for purposes of creating new Units.

Contractor or General Contractor: _____

Declaration: that certain Declaration of Restrictive Covenants by the Borrower in favor of the City in connection with the Loan and recorded simultaneously with this document.

Developer: 2705 N 4th Street LLC.

Development: The Improvements after completion of construction, rehabilitation, and renovation in accordance with the Final Plans.

Events of Default: As defined in Section 10 of this Agreement.

Final Plans: The plans and specifications for the construction or rehabilitation of the Improvements and all amendments and modifications must be reviewed and approved by the City prior to the disbursement of the Loan.

Loan Documents: The Note, this Funding Agreement, Deed of Trust, the Declaration and all other documents evidencing or securing the Loan.

Note: That certain Promissory Note dated as of the date hereof, in the principal amount of Six Hundred Forty Thousand and 00/100 Dollars ($640,000.00) by the Borrower to the City, evidencing the Loan pursuant to the Loan Documents, as may be amended, modified or supplemented from time to time.

Operating Agreement: The Operating Agreement of the Borrower dated as of _____.

State: Shall mean the state of Arizona.

Units: The sixteen (16) new affordable housing residential units described in the Final Plans.

3. THE LOAN.

The City will make the Loan to the Borrower subject to the terms and conditions set forth herein, and the Borrower agrees to the Loan and expressly agrees to comply with and perform all of the terms and conditions of the Loan Documents.

(a) Disbursement and Use of ARBP Funds. The City will disburse the proceeds of the Loan to Borrower within thirty (30) days after execution of this Agreement, but only after the recordation of the Deed of Trust and Declaration (which also shall be recorded in such thirty (30)

day period). Funds shall be used as outlined in the Borrower's/Applicant's application for funding to complete construction or rehabilitation of an affordable housing project that meets the requirements of the ARBP as established in City of Flagstaff Resolution No. 2025-44.

(b) Term. The term of the Loan shall commence upon the disbursement of the ARBP Funds and continue for thirty (30) years after issuance of the Certificate of Occupancy for the Development.

(c) Security. The Loan shall be evidenced by the Note and the other Loan Documents as herein provided.

(d) Interest and Payments. No interest and no payments are required during the Term of the Loan if the Borrower has not otherwise defaulted on the Loan and if the affordable units in the Development continuously meet affordability and maintenance requirements as reasonably determined by the City under the terms of this Agreement.

(e) Loan Forgiveness. Upon Borrower's strict compliance with the Loan Documentsthroughout the entire Term, as reasonably determined by City, the City will forgive the balance of the Loan consistent with the ARBP Award and as more specifically described in the Promissory Note. The minimum required affordability period is thirty (30) years from the Certificate of Occupancy and shall be sustained regardless of any transfer of ownership of the Property, such transfer being subject to the terms and conditions of the Loan Documents. Upon forgiveness of the Loan, or upon prepayment of the Loan, as the case may be, the City shall cause the Deed of Trust and Declaration of Restrictive Covenant to be released.

4. CONSTRUCTION OF IMPROVEMENTS.

(a) Commencement and Completion. The Borrower shall cause construction, rehabilitation, and renovation of the Improvements to be prosecuted with reasonable diligence and dispatch so that the Improvements are completed substantially in accordance with the Final Plans on or before the Completion Date, free and clear of all liens or claims for materials, labor, services, or other items furnished in the construction of the Improvements, and in full compliance with all building, zoning and other applicable local, state and federal ordinances and regulations. The Completion Date shall be extended for Unavoidable Delays (as defined below). Completion of the Improvements shall be evidenced by issuance of a certificate of occupancy or completion on all of the Improvements by the governmental authorities having jurisdiction over the Development. "Unavoidable Delays" is defined as delays due to strikes, pandemics, blackouts, acts of God, restrictions of any governmental authority, failure or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental authority, enemy action, civil disturbance, fire, inclement weather, or any other act beyond the reasonable control of the Borrower, (excluding, however, the inability or failure of the Borrower to obtain any financing which may be necessary to carry out its obligations under this Agreement), provided, however, within fifteen (15) days after the termination of the occurrence which caused any such delay, the Borrower shall have given written notice to the City of the cause of the delay and the period of time during which it existed, and the period of Unavoidable Delay shall be such period of time

during which the particular delay existed or such longer period of time as the City, in its reasonable discretion, may determine.

(b) Right of City to Inspect. During construction of the Development and any warranty period, the City and any other agent or representative of the City shall have the right to enter the Development during normal business hours for the purpose of inspecting the construction and the Improvements upon forty-eight (48) hours prior written notice to the Borrower. The Borrower shall cause the General Contractor and all subcontractors and suppliers to cooperate with the City and such agents and representatives in the exercise of their rights and performance of their duties hereunder. This provision shall not impose on the City any obligation to inspect or to correct any defects discovered or to notify any person with respect thereto.

(c) Unit Availability for Occupancy. Units must be available for occupancy within twenty-four (24) months of the Borrower receiving notification of reservation of Program Funds.

5. CONDITIONS TO THE EXECUTION OF THIS AGREEMENT BY CITY. The conditions listed below are conditions precedent to City's execution hereof and shall be complied with in form and substance satisfactory to City and its counsel prior to City's execution hereof:

(a) Survey. The Borrower shall deliver to City a current survey of the Property, certified to the City.

(b) Contracts. The Borrower shall deliver to the City an executed copy of the Construction Contract.

(c) Note. The Note shall be duly authorized, executed and delivered by the Borrower to the City.

(d) Deed of Trust. The Deed of Trust shall be duly authorized and delivered by the Trustor to the City.

(e) Declaration. The Declaration shall be duly authorized, executed and delivered by the Borrower to the City.

(f) Organizational Documents. To the extent applicable, the Borrower shall deliver to the City the following documents:

i. The Certificate of Incorporation of the Borrower, or, if the Borrower is a limited partnership, the Certificate of Limited Partnership of the Borrower and all amendments thereto, or, if the Borrower is a limited liability company, the Articles of Organization of the Borrower and all amendments thereto, and the Certificate of Incorporation of any corporate general partners or managing members, as applicable, of the Borrower certified by the appropriate official of the state of their incorporation, together with a certificate of such official to the effect that each such entity is in good standing therein;

ii. A good standing certificate of the Borrower from the Arizona Corporation Commission;

iii. Articles of Incorporation and Bylaws of the Borrower, if a corporation, certified by the Secretary of such corporation; or Limited Partnership Agreement of the Borrower, if a limited partnership; or Articles of Organization and Operating Agreement of the Borrower, if a limited liability company;

iv. Incumbency certificates identifying the officers and directors of the Borrower or its General Partner or its Managing Member, as applicable, certified by the Secretary of such entity;

v. Certified resolutions of the Board of Directors of the Borrower or the corporate general partners or managers of Borrower, as applicable, authorizing the execution and delivery of the Loan Documents, and all other documents necessary or desirable for the consummation of the transactions contemplated by this Agreement; and

vi. Certified resolutions of the Borrower or its General Partner or its Managing Member, as applicable, authorizing the execution and delivery of the Loan Documents, and all other documents necessary or desirable for the consummation of the transactions contemplated by this Agreement.

(g) Insurance. The insurance requirements are attached hereto as **Exhibit "B"** and incorporated herein by reference and include the requirements of this paragraph. Borrower shall deliver evidence satisfactory to the City of the existence of public liability, builder's risk, permanent hazard/all risks, flood (if applicable) and worker's compensation insurance and any other reasonable insurance coverage. Borrower agrees that it shall immediately notify the City upon receiving notice of cancellation, modification or non-renewal of any policy. Borrower agrees that the City shall have the right to take any action necessary to continue said insurance in full force and effect including, but not limited to, paying premiums. Any funds advanced to continue said policies in full force and effect shall be considered as advances hereunder and shall bear interest from the date of disbursement at the default rate set forth under the Loan Documents.

(h) Other Documents. The Borrower shall deliver to the City such other documents and information as the City may reasonably require.

(i) Representations and Warranties. The representations and warranties of the Borrower as set forth in this Agreement and the Loan Documents shall be true and correct in all material respects at the time made.

6. EXPENSES. The Borrower shall pay all reasonable, third-party fees and charges actually incurred in the procuring and making of the Loan, if applicable, and all other reasonable, third-party expenses actually incurred by the City during the term of the Loan, including without limitation the title company's fees and premiums, charges for examination of title to the Development, expenses of surveys, legal fees and costs, and recording expenses. The Borrower

shall also pay any and all insurance premiums, taxes, assessments, water rates, sewer rates and other charges, liens and encumbrances upon the Development, any other expenses shown as part of the total development cost, and any other amounts necessary for the payment of the cost of the Improvements.

7. SPECIAL PROVISIONS APPLICABLE TO LOANS UNDER THE ARBP AWARD. The Borrower expressly agrees to the following terms and conditions:

(a) Set Asides and Rent Level Requirements. The Borrower shall comply with the set asides, rent restrictions, demographic commitment and other requirements set forth in the Loan Documents.

(b) Compliance with the ARBP. Without limitation, and notwithstanding anything to the contrary herein, the ARBP Funds shall only be used for costs relating to acquisition and rehabilitation of the existing buildings (Improvements) for purposes of creating new affordable rental housing units. The ARBP Funds shall not be used for fees or costs related to the construction of new freestanding buildings, market-rate units in the project, complete demolition of buildings, renovation of existing residential units, or the improvement of undeveloped land. If Borrower fails to comply with the terms of ARBP Award and Loan Documents, the Loan will be deemed in default and it shall be required to immediately repay to the City the ARBP Funds.

(c) No Discrimination. The Borrower shall not discriminate on the basis of race, religion, color, sex, familial status, national origin or disability in the lease, use or occupancy of the Development. Age discrimination and discrimination against minor dependents, except when units are specifically being held for the elderly is also not permitted. Notwithstanding the foregoing, Borrower and City may mutually agree to amend this Funding Agreement to allow for a facility that serves community needs of a specific group or category of persons requiring services so long as such operations are consistent with applicable laws.

(d) Prepayment Penalty. The Loan shall not be subject to any prepayment penalty.

(e) Sale, Transfer, or Refinancing of the Development. Any attempted sale, transfer, conveyance, of the Development, unless reviewed and approved in writing by the City in advance, is strictly prohibited and all principal and interest, as well as all other obligations due or accrued under the Loan Documents, shall be due immediately.

(f) Uniform Administrative Requirements. Borrower shall retain all records pertaining to this Agreement, regardless of the form of the record (e.g., paper, film, recording, electronic), including but not limited to financial records, supporting documents, statistical records, and any other documents (hereinafter referred to as "Records") for a period of five (5) fiscal years after all reporting requirements are satisfied and final payments have been received, or if an audit has been initiated and audit findings through ligation or otherwise. Reserved.

(g) Relocation of Tenants (Federal Funding Requirement). Reserved.

(h) Lead-Based Paint. The Development is subject to the requirements of 24 C.F.R. Part 35.

(i) Debarment and Suspension. Borrower hereby certifies that neither it nor any of its partners, members or principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in receiving ARBP Program funds.

(j) Flood Insurance. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), ARBP Program funds may not be used with respect to the acquisition, new construction or rehabilitation of a Development located in an area identified by the Federal Emergency Management Agency ("FEMA") as having special flood hazards unless the community in which the Development is located is participating in the national flood insurance program; therefore, the Borrower hereby certifies that the Development is either not located in an area identified by FEMA as having special flood hazards or, if the Development is located in an area identified by FEMA as having special flood hazards, that the community in which the Development is located is participating in the national flood insurance program.

(k) Property Standards for Construction, Rehabilitation, and Renovation. The Development must meet or exceed the following requirements including, but not limited to, (i) the accessibility requirements of 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), (ii) Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable, and (iii) the HUD energy efficiency standards established pursuant to section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709). Nothing herein shall be construed as waiving City building and development standards.

(l) VAWA Requirements. To the extent required by law, the Borrower agrees to comply with the Violence Against Women Act ("VAWA") requirements set forth in 24 CFR part 5, subpart L, including notice obligations and obligations under the emergency transfer plan.

(m) Citations. In the event that any of the citations listed herein are changed, modified, amended or corrected, Borrower agrees to comply with any and all applicable, similar statutes, rules or regulations.

(n) Cooperation. The Borrower shall cooperate fully, as and to the extent requested by the City, in connection with any audit or report required under the Act and the rules promulgated thereunder and with any other audit or reporting requirements under federal, state, or local law. Such cooperation shall include the retention and provision of records and information reasonably relevant to any such report or audit and making employees and agents available to provide additional information and explanation of any material provided under this Agreement.

(o) Reports. The Borrower shall provide the City with annual reports and a close-out report. These reports shall include the current status and progress by the Borrower in completing the Improvements and the expenditure of funds under this Agreement, in addition to any other information requested by the City. Annual reports are due to the City no later than thirty (30) days after the end of each calendar year and shall be sent each year until submission of the

administrative close-out report.

(p) Required certifications. Each report must include a certification, signed by an official who is authorized to legally bind the Borrower.

8. WARRANTIES AND REPRESENTATIONS OF THE BORROWER. The Borrower represents and warrants as of the date hereof, as follows:

(a) Organization Status. If a partnership, the Borrower is duly organized, is in good standing as a limited partnership under the laws of the State and the state of its organization, if different; further, each general partner of the Borrower if a corporation or a limited liability company, is duly organized and in good standing under the laws of the State and the state of incorporation or organization, if different. If a corporation, the Borrower is duly organized, is in good standing as a corporation under the laws of the State and the state of its organization, if different. If a limited liability company, the Borrower is duly organized, is in good standing as a limited liability company under the laws of the State and the state of its organization, if different.

(b) Compliance with Laws During Construction, Rehabilitation, or Renovation. Borrower warrants that activities during construction, rehabilitation, or renovation of the Development shall not result in any violation of any applicable zoning, building or any other local, state or federal laws, ordinances and regulations existing with respect to the Property or Development; the Borrower shall obtain all licenses, permits and approvals required by all local, state and federal agencies regulating such prior to engaging in such activities; and the Borrower is in compliance with all laws, regulations, ordinances and orders of all governmental authorities having jurisdiction over the Development.

(c) Suspension/Debarment. Borrower certifies, for itself and all its contractors and subcontractors, that as of the date of its execution of this Agreement, neither Borrower nor any of its contractors, subcontractors or suppliers are under suspension or debarment by the State of Arizona, the federal government or any governmental entity, instrumentality or authority and, if Borrower cannot so certify, then it agrees to submit with this Agreement a written explanation of why such certification cannot be made.

(d) Authority to Enter into Loan Documents. The Borrower has full power and authority to enter into the Loan Documents and consummate the transactions contemplated hereby, and the facts and matters expressed in the opinions of its legal counsel are true and correct.

(e) Validity of Loan Documents. The Loan Documents have been approved by those people who have proper authority, and are in all respects legal, valid and binding according to their terms.

(f) Priority of Lien on Personalty. Except as previously disclosed in writing to the City or in the Title Insurance Policy, no chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement has been or will be executed with respect to any personal property, chattel or fixture used in conjunction with the Development.

(g) Conflicting Transactions of the Borrower. The consummation of the transaction hereby contemplated and the performance of the obligations of the Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any lease, bank loan or credit agreement, or other instrument to which the Borrower is a party or by which it may be bound or affected.

(h) Pending Litigation. Except for actions, suits or proceedings which have been specifically disclosed to and approved by the City in writing, there are no actions, suits or proceedings before or by any court or governmental authority, pending, threatened or affecting the Borrower or the Development which, if determined adversely to the Borrower or the Development, would have a materially adverse effect on the financial condition, properties, businesses or operations of the Borrower or the Development, or which may prevent or interfere with or adversely affect the Borrower entering into the Loan Documents, or the Borrower's ability to perform its obligations under the Loan Documents, or involving the validity of the Loan Documents, and, to the Borrower's knowledge, Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

(i) Advertising. Subject to applicable laws, rules and regulations, during the period of the construction of the Improvements, the City shall have the right to install and maintain on the Development one or more signs identifying the City, or to be identified on such signs installed by others, as one of the institutions financing the Development. A sign or signs will be provided by the City and erected at the Borrower's expense. In connection with any leasing of the Development, or any portion thereof, which has been approved by the City, the Borrower will not use any promotional advertising or other material using the City's name without first obtaining City's prior written approval thereof, which approval shall not be unreasonably withheld.

(j) Hazardous Waste. The Borrower is in compliance in all material respects with all provisions of the Federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980 and other similar federal, state and local statutory schemes imposing liability on the Borrower relating to the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and orders issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts of competent jurisdiction with respect thereto, and no assessment, notice of (primary or secondary) liability or notice of financial responsibility, or the amount thereof, or to impose civil penalties has been received by the Borrower. The Borrower has paid any environmental excise taxes, imposed upon it with respect to the Development pursuant to Sections 4611, 4661 or 4681 of the Internal Revenue Code of 1986, as from time to time amended.

(k) Representations and Warranties in Loan Documents. All of the representations and warranties of Borrower contained in the other Loan Documents are true and correct in all material respects and are incorporated herein by reference as if set out in full.

(l) Other Financing. The Borrower has not received any other financing for the Development other than the Loan and the First Mortgage Loan.

(m) Labor and Materials. All labor and materials contracted for in connection with the construction of the Improvements shall be used and employed solely on the Land in said construction and only in substantial accordance with the Final Plans.

(n) Contractor and Other Contractors. The Construction Contract and all other contracts with architects, engineers and other professionals, which have been or will be executed, are in full force and effect and are the legal, valid and binding obligations of the General Contractor and each other contractor, as applicable, enforceable in accordance with the respective terms thereof; the General Contractor is a duly licensed general contractor with the Arizona Registrar of Contractors under the laws of the State of Arizona; and each other professional is a duly licensed professional under the laws of the State of Arizona.

(o) Payments of Taxes. The Borrower and each of the guarantors, if any, has filed or caused to be filed, or will file or cause to be filed, all federal, state and local tax returns that are required to be filed and has paid or caused to be paid all taxes as shown on such returns or on any assessment received by it, to the extent that such taxes have become due.

(p) O.S.H.A. and Environmental Matters. The Borrower has duly complied with, and its properties are in full compliance in all material respects with, the provisions of the Federal Occupational Safety and Health Act, the Environmental Protection Act, and the Resource Conservation and Recovery Act ("RCRA") and all rules and regulations thereunder and all similar state and local laws, rules and regulations, including but not limited to any and all of the foregoing relating in any manner to underground tanks and other storage facilities or equipment and the removal and disposal of asbestos; there have been no outstanding citations, notices or orders of noncompliance issued to Borrower relating to its businesses or properties under any such laws, rules or regulations.

(q) ADA Compliance. That to the best of its knowledge, and to the extent applicable, the Development complies and shall comply with the Americans With Disabilities Act of 1990, as implemented by 28 C.F.R. Part 35, as amended (the "ADA"); and to the extent any renovation or changes are required to be made to the Development, so as to have the Development comply with and meet all the requirements of the ADA, the Borrower shall, at its expense, promptly and immediately undertake said renovations or improvements. Furthermore, the Borrower indemnifies the City from and against all claims, damages, fines, penalties, losses, expenses (including costs and reasonable attorneys' fees), liabilities and obligations arising out of or relating to any breach by the Borrower of this representation or the fact that the Development is not in compliance with the ADA.

9. ADDITIONAL AND CONTINUING COVENANTS OF THE BORROWER.

The Borrower covenants and agrees with the City as follows:

(a) Compliance with Laws. The Borrower at all times will comply with all federal, state and local laws, ordinances and regulations relating to the ongoing use, operation, and maintenance of the Development, and will obtain and keep in good standing all necessary licenses, permits and approvals required or desirable for the Development.

(b) Brokerage Commissions. The Borrower will not knowingly engage in any activity or enter into any relationship which will give rise to any loan or brokerage commission with regard to the Loan, and the Borrower will indemnify the City from the claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby.

(c) The Borrower to Maintain Bookkeeping System. The Borrower shall maintain a bookkeeping system for the Development in form and content sufficient for the City to conduct reviews, inspections, certifications and reports required by this Agreement. The City shall have full (but confidential) access during normal business hours and after written notice to the Borrower, to the books, records and contracts pertaining to the Development, the Borrower and the General Contractor to determine the accuracy, correctness and reasonableness of the sum advanced hereunder. Borrower shall retain all records pertaining to this Agreement, regardless of the form of the record (e.g. paper, film, recording, electronic), including but not limited to financial records, supporting documents, statistical records, and any other documents (hereinafter referred to as "Records") for a period of five (5) fiscal years after all reporting requirements are satisfied and final disbursements have been received, or if an audit has been initiated and audit findings through ligation or otherwise.

(d) Collection of Insurance Proceeds. The Borrower will cooperate with the City in obtaining for the City the benefits of any insurance or other proceeds lawfully or equitably payable to it in connection with the transaction contemplated hereby and the collection of any indebtedness or obligation of the Borrower to the City incurred hereunder (including the payment by the Borrower of the expense of an independent appraisal on behalf of the City in case of a fire or other casualty affecting the Development).

(e) Consolidation, Merger, Entity Status. The Borrower shall not, without the City's prior written consent, consolidate with or merge into any other partnership, corporation or limited liability company, or permit another partnership, corporation or limited liability company to merge into it, or voluntarily or involuntarily fail to maintain its current status.

(f) Further Assurances and Preservation of Security. The Borrower will do all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Agreement, as the City shall reasonably require from time to time, and will do such other acts necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Note, as the City may require.

(g) Utilization of Loan Proceeds. The Borrower will utilize the proceeds of the Loan solely for eligible uses under the ARBP.

(h) No Assignment. The Borrower shall not assign this Agreement, without the City's prior written consent, which consent may be granted or disallowed in the City's sole discretion.

Any assignment of this Agreement shall be made to the same assignee of all Loan Documents, and if not, any such assignment shall be void and of no effect.

(i) Rights Inferior. The City shall not be liable to materialmen, contractors, subcontractors, sub-subcontractors, laborers, suppliers or others for goods or services delivered by them in or upon the Land or employed in the construction of the Improvements, or for any debts or claims accruing to any of said parties against the Borrower or against the Development , and it is distinctly understood and agreed that there is no contractual relationship, either express or implied, between the City and any materialmen, contractors, sub-contractors, sub-subcontractors, craftsmen, laborers or any person supplying any work, labor or material.

(j) Borrower's Rights Assigned. The Borrower hereby assigns to the City, effective however, only after an Event of Default and the expiration of applicable cure periods, all rights of the Borrower under its contract with the General Contractor and under its contracts with any other professionals, and the City shall have the option after an Event of Default, and the expiration of applicable cure periods, in its sole discretion and in addition to any other rights and remedies the City may have, to exercise its rights under this assignment. Nothing herein shall be construed, however, to require the City to exercise any rights under this paragraph.

10. DEFAULT. Upon the occurrence of any of the following events and subject to the expiration of any applicable cure periods (an "Event of Default") all obligations on the part of the City shall, if the City elects, terminate, and the City may at its option exercise any of its remedies at law or equity including without limitation causing Borrower's immediate repayment of the Loan. All prior commitments to forgive any portion or all of the Loan shall be terminated and not reinstated notwithstanding the Borrower bringing the Loan into compliance or curing the Default.

(a) Bankruptcy. If there is filed by or against the Borrower a petition in bankruptcy or a petition for the appointment of a receiver or trustee of the property of the Borrower, and any such petition not filed by the Borrower is not dismissed within ninety (90) days of the date of filing; or if the Borrower files a petition for reorganization under any of the provisions of the United States Bankruptcy Code or of any similar law, state, federal, or foreign, and any such petition is not dismissed within ninety (90) days of the date of filing, or if either of them makes a general assignment for the benefit of creditors or makes any insolvency assignment or is adjudicated insolvent by any court of competent jurisdiction, any of which events, in the reasonable judgment of the City, will cause material interference with the timely completion of the Improvements; or

(b) Payment. The Borrower fails to make any payment of principal or interest required under the Note when due; or

(c) Breach of Covenants, Warranties, and Representations. If any warranty or representation made by the Borrower or pursuant to the terms of the Loan Documents shall be false or misleading in any material respect, or if the Borrower shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in the Loan Documents (provided, that with respect to nonmonetary Events of Default, the City shall give written notice to the Borrower, who shall have thirty (30) days after the date of the written notice to cure, which time may be reasonably extended by the City, provided that if Borrower cannot reasonably cure

within thirty (30) days, Borrower shall be entitled to such additional period of time as is the City deems appropriate in its sole discretion for Borrower to cure such nonperformance, and that with respect to monetary Events of Default, the Borrower shall have a five (5) day grace period), or is unable or unwilling to meet its obligations thereunder; or

(d) Failure to Comply with Requirements of ARBP Fund Recipients. If at any time the Borrower or Development is not in compliance with requirements associated with the ARBP, the Loan will be immediately due and payable to the City.

11. REMEDIES OF THE CITY. Upon the occurrence and during the continuance of an Event of Default, then the City may, at its option, upon written notice to the Borrower:

(a) Cancel this Agreement.

(b) Commence legal or equitable action to enforce performance of this Agreement.

(c) Accelerate the payment of the Note and the Loan and commence legal and equitable action to collect all such amounts due the City.

(e) Exercise any other rights or remedies the City may have under the Loan Documents referred to in this Agreement or executed in connection with the Loan or which may be available under applicable law.

No right, power or remedy of the City as provided in this Agreement is intended to be exclusive of any other right, power, or remedy of the City, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to the City now or hereafter existing at law or in equity and may be pursued separately, successively or concurrently at the sole discretion of the City. The failure of the City to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

12. GENERAL TERMS. The following shall be applicable throughout the period of this Agreement or thereafter as provided herein:

(a) Rights of Third Parties. All conditions of the City hereunder are imposed solely and exclusively for the benefit of the City and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that the City will make the Loan in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of this Agreement or the Loan Documents, any provisions of which may be freely waived in whole or in part by the City at any time if, in its sole discretion, it deems it desirable to do so. In particular, the City makes no representations and assumes no duties or obligations as to third parties concerning the quality of the Borrower's construction, rehabilitation, or renovation of the Improvements or the Development or the absence therefrom of defects.

(b) The Borrower Not City's Agent. Nothing in this Agreement, the Note, or any other Loan Document shall be construed to make the Borrower the City's agent for any purpose

whatsoever, or the Borrower and the City partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

(c) The City Not Liable for Damage or Loss. All inspections and other services rendered by or on behalf of the City shall be rendered solely for the protection and benefit of the City. Neither the Borrower nor other third persons shall be entitled to claim any loss or damage against the City or against its agents or employees for failure to properly discharge their duties.

(d) The City Not Obligated to Insure Proper Disbursement of Funds to Third Parties. Nothing contained in this Agreement, or the Loan Documents, shall impose upon the City any obligation to oversee the proper use or application of any disbursements and advances of funds made pursuant to the Loan.

(e) Indemnification from Third Party Claims. The Borrower shall indemnify and hold harmless the City, its directors, officers, members, officials, employees and agents (collectively, the "Indemnified Parties"), from any actual, third party liability, claims or losses, including reasonable attorneys' fees and costs, resulting from the disbursement of the proceeds of the Loan to the Borrower or its designee or from the condition of the Development, whether related to the quality of construction or otherwise, and whether arising during or after the term of the Loan excluding misconduct, bad faith or negligence of any of the Indemnified Parties. This provision shall survive the repayment or termination of the Loan and shall continue in full force and effect so long as the possibility of such liability, claims, or losses exists.

(f) Rights of Subcontractor, Laborers and Materialmen. In no event shall this Agreement be construed to make the City, the Title Company or any agent of the City liable to the General Contractor or any subcontractor, laborers, materialmen, craftsmen, or others for labor, materials, or services delivered to the Development or goods specially fabricated for incorporation therein, or for debts or claims accruing or arising to such persons or parties against the Borrower or the General Contractor. It is distinctly understood and agreed that, other than as specifically provided herein, there is no relationship of any type whatsoever, contractual or otherwise, either express or implied, between the City and the General Contractor, nor is there any such relationship between the City and any materialman, subcontractor, craftsman, laborer or any other person or entity supplying any labor, materials or services to the Development or specially fabricating goods to be incorporated therein. Except as otherwise specifically provided herein, no such persons or entities are intended to be third party beneficiaries of this Agreement or any document or instrument related to the Loan or to have any claim or claims in or to any undisbursed or retained proceeds of the Loan.

(g) Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference and shall not limit or otherwise affect any of the terms hereof.

(h) Invalid Provisions to Affect No Others/Severability. If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said

clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

(i) Application of Interest to Reduce Principal Sums Due. In the event that any charge, interest or late charge is above the maximum rate provided by law, then any excess amount over the lawful rate shall be applied by the City to reduce the principal sum of the Loan or any other amounts due the City hereunder.

(j) Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement.

(k) Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the others and shall apply jointly and severally.

(l) Prior Agreement. To the extent necessary, this Agreement shall be deemed to be an amendment to any prior loan agreement between the Borrower and the City, and in the event of a conflict between the terms of this Agreement and of any such prior agreement, the terms of this Agreement shall govern.

(m) Waiver. If the City shall waive any provisions of the Loan Documents, or shall fail to enforce any of the conditions or provisions of this Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and the City shall thereafter have the right to insist upon the enforcement of such conditions or provisions. Furthermore, no provision of this Agreement shall be amended, waived, modified, discharged or terminated, except by instrument in writing signed by the parties hereto.

(n) Notices. All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; or (b) national express air courier, provided such courier maintains written verification of actual delivery. Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent.

The City:	City of Flagstaff 211 W. Aspen Avenue Flagstaff, AZ 86001 Attn: City of Flagstaff Housing Division Director
with a copy to:	City of Flagstaff 211 W. Aspen Avenue Flagstaff, AZ 86001 Attn: City Attorney

Borrower: 2705 N 4th Street LLC
4180 S. Lariat Loop
Flagstaff, AZ 86005
Attention: Matt Peace

Any party may change said address by giving the other parties hereto Notice of such change of address in accordance with the foregoing provisions.

(o) Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their heirs, legal representatives, successors and assigns; but nothing herein shall authorize the assignment hereof by the Borrower.

(p) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute collectively but one and the same instrument.

(q) Right of Cancellation. All parties hereto acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of § 38-511, Arizona Revised Statutes.

(r) Discretion of the City. Wherever pursuant to this Agreement (a) the City exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to the City, or (c) any other decision or determination is to be made by the City, the decision of the City to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by the City, shall be in the reasonable discretion of the City and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(s) Waiver of Jury Trial. BY EXECUTING THIS AGREEMENT, THE BORROWER AND THE CITY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RESPECTIVE RIGHTS OR THE RIGHTS OF THEIR RESPECTIVE ASSIGNS OR SUCCESSORS TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSSCLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE, BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, THE PROMISSORY NOTE, DEED OF TRUST, AND DECLARTION OF RESTRICTIVE COVENANTS.

The Borrower acknowledges that the above paragraph has been expressly bargained for by the City as part of the transaction with the Borrower and that, but for the Borrower's agreement thereto, the City would not have extended the Loan evidenced by this Agreement for the terms and at the interest rates provided.

(t) Attorneys' Fees and Costs. If any legal services by an attorney or attorneys are required to enforce the requirements of this Agreement or any of the Loan Documents, the

prevailing party will be reimbursed by the other party for all costs and expenses of such legal services, including but not limited to reasonable attorneys' fees, and if in legal action costs and expense of such action, including but not limited to reasonable attorneys' fees as may be fixed by the court.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

COUNTERPART SIGNATURE PAGE TO
FUNDING AGREEMENT

(URBAN LOFTS)

IN WITNESS WHEREOF, the City and the Borrower have caused this Agreement to be executed on the date first set forth above.

CITY OF FLAGSTAFF, ARIZONA, a municipal corporation of the State of Arizona

By:_____

Name:_____

Title:_____

COUNTERPART SIGNATURE PAGE TO
FUNDING AGREEMENT

Project Name: URBAN LOFTS

IN WITNESS WHEREOF, the City and the Borrower have caused this Agreement to be executed on the date first set forth above.

BORROWER

2705 N 4TH STREET LLC,
a Wyoming limited liability company

BY: _____

ITS: _____

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B"

INSURANCE REQUIREMENTS

I. Builders' Risk Insurance

The Tenant shall provide, or cause its Contractor to provide, Builders Risk insurance for the construction of the Development in an amount equal to the full Development construction cost. The Tenant may require its General Contractor or Construction Manager at Risk to procure the Builders Risk insurance on the entire Development.

1. Coverage shall be written on a special causes of loss (all risks) form, replacement cost value basis, and shall include coverage for soft costs, flood and earth movement unless otherwise waived by the Landlord.

2. If the policy is purchased by the General Contractor or Construction Manager at Risk, the Tenant must also be a named insured under the policy.

3. A standard Lender's Loss Payment Endorsement naming the City of Flagstaff shall be endorsed onto the policy.

4. A Permit to Occupy Endorsement shall be included if tenants can move in before construction is completed.

5. The policy must provide coverage from the time any covered property becomes the responsibility of the Tenant, and continue without interruption during construction, renovation or installation, including any time during which the covered property is being transported to the construction/installation site, or awaiting installation whether on or off site.

6. Policy shall contain a waiver of subrogation in favor of the Landlord.

II. OPERATIONAL PHASE (AFTER CONSTRUCTION IS COMPLETED)

After construction is completed, the Tenant shall maintain or cause any of its Contractors performing services on the Premises to maintain for the duration of the Ground Lease, or until the Tenant has no further interest in the Development, insurance coverages and limits as described below.

1. **Commercial General Liability – Occurrence Form**
   Policy shall include bodily injury, property damage and broad form contractual liability coverage for the ownership, operation and management of the completed Development and include coverage for premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. Policy shall include coverage for management operations on and off-site of the Development.

General Aggregate	$5,000,000

Products – Completed Operations Aggregate	$5,000,000
Personal and Advertising Injury	$5,000,000
Each Occurrence	$5,000,000
Fire Damage (damage to rented premises)	$1,000,000

a. The policy shall include the Landlord as an additional insured with respect to liability arising out of ownership, operations, management or occupancy of the property subject to this Ground Lease.

III. Worker's Compensation and Employers' Liability

If the Tenant has employees, evidence of Worker's Compensation insurance as described shall be provided. All Contractors providing services during the Operational Phase must also provide Worker's Compensation insurance.

Worker's Compensation	Statutory
Employers' Liability	$100,000
Disease – Each Employee	$100,000
Disease – Policy Limit	$100,000

a. Policy shall contain a waiver of subrogation in favor the Landlord.

b. This requirement shall not apply when a Contractor is exempt under A.R.S. 23-901 AND when such Contractor executes the appropriate sole proprietor waiver form.

IV. All Risk Property Insurance

The Tenant shall maintain or cause the Property Manager to maintain in effect property insurance for all improvements, sufficient to satisfy the requirements of all lenders including the Landlord, and including buildings, unattached structures, fencing, swimming pools and playground equipment. Policy shall include:

a. Special form all risk insurance including the perils of flood and earthquake, unless otherwise waived by the Landlord, which waiver shall not be unreasonably withheld.

b. 100% replacement cost coverage.

c. Mechanical breakdown/boiler and machinery.

d. Business interruption/loss of rents coverage.

e. Lender's Loss Payable Endorsement naming the City of Flagstaff.

f. The Tenant is responsible for any policy deductibles.

g. Policy shall contain a waiver of subrogation in favor of the Landlord.