

**TRI-PARTY AGREEMENT RE PERMANENT FINANCING
(ROCKY MOUNTAIN CRC)**

This TRI-PARTY AGREEMENT RE PERMANENT FINANCING (this “*Agreement*”) is dated for reference purposes as of _____, 2018, between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association (“*Bank*”), and **ROCKY MOUNTAIN COMMUNITY REINVESTMENT CORPORATION**, a Utah nonprofit corporation (“*Permanent Lender*”), with the acknowledgement and consent of **APACHE JUNCTION VILLAS, LLC**, an Arizona limited liability company (“*Borrower*”).

Factual Background

A. Pursuant to that certain Construction Loan Agreement dated as of even date herewith (the “*Loan Agreement*”), by and between Bank and Borrower, Bank has agreed to make a loan to Borrower (the “*Loan*”) in the maximum principal amount of \$_____. Borrower’s obligation to repay the Loan is evidenced by that certain Promissory Note dated as of even date herewith, made by Borrower to the order of Bank, in the original face principal amount of \$_____ (the “*Note*”) and is secured by, among other things, that certain Construction Deed of Trust, Assignment of Leases Rents, Security Agreement and Fixture Filing dated as of even date herewith (the “*Deed of Trust*”), executed by Borrower, as trustor, for the benefit of Bank, as beneficiary, and being recorded herewith in the Official Records of Maricopa County, Arizona (the “*Official Records*”). The Deed of Trust encumbers the property (“*Land*”) more particularly described on **Exhibit A** attached hereto and the other real and personal property described therein (collectively, the “*Property*”). The Loan Agreement, the Note, the Deed of Trust, and all other documents evidencing and/or securing the Loan are collectively referred to herein as “*Bank Loan Documents*”. Capitalized terms used above and elsewhere in this Agreement without definition have the meanings given them in the Loan Agreement.

B. Permanent Lender has issued to Borrower, and Borrower has accepted, that certain Loan Commitment (“*Permanent Commitment*”) dated as of February 9, 2018, pursuant to which, among other things, Permanent Lender has agreed to make a permanent mortgage loan (“*Permanent Loan*”) to Borrower in the principal amount of \$1,992,184. When made, the Permanent Loan will be evidenced by a promissory note (“*Permanent Note*”) made by Borrower to the order of Permanent Lender in a principal amount equal to the Permanent Loan, and secured by a deed of trust (“*Permanent Deed of Trust*”) made by Borrower, as trustor, for the benefit of Permanent Lender, as beneficiary, and encumbering the Land. The Permanent Commitment, the Permanent Note, the Permanent Deed of Trust and the other documents, instruments and agreements now or hereafter evidencing and/or securing the Permanent Loan shall sometimes hereinafter be collectively referred to as the “*Permanent Documents*”.

C. Bank, as a condition to making the Loan to Borrower, has required that Permanent Lender and Borrower execute and deliver this Agreement (and Permanent Lender and Borrower are willing to execute and deliver this Agreement) for the Permanent Loan.

AGREEMENT

1. **Recitals.**

The foregoing recitals are true and correct and are incorporated herein by this reference as agreements of the parties.

2. **Disbursement of Permanent Loan.**

Permanent Lender shall disburse one hundred percent (100%) of the proceeds of the Permanent Loan directly to Lender, upon Permanent Lender's receipt of written evidence that (i) Borrower has completed the Project substantially in accordance with the Permanent Commitment, (ii) Borrower has paid all Project costs incurred in connection therewith and the Project is free and clear of all mechanics' liens, (iii) a certificate of occupancy has been issued for the Project, and (iv) the Project shall (a) for a period of ninety (90) consecutive days, have achieved a 90% occupancy rate, and (b) for a ninety (90) consecutive days, have attained a debt service coverage ratio for the Permanent Loan of not less than 1.20 to 1.00.

3. **Assignment.**

Borrower hereby assigns to Bank, as additional security for Borrower's obligations to Bank under the Bank Loan Documents, all of Borrower's right, title and interest in, to and under: (a) the Permanent Loan (including, without limitation, all advances and proceeds of the Permanent Loan), (b) the Permanent Commitment, (c) the other Permanent Documents, (d) all amendments, modifications, extensions, renewals and substitutions of, to or for the foregoing, and (e) all proceeds of the foregoing, whether voluntary or involuntary (all of the foregoing, collectively, the "***Permanent Loan Collateral***"). Permanent Lender and Borrower acknowledge and agree that upon the occurrence of an Event of Default under the Loan Agreement, Bank, among other things, may (a) exercise all rights and remedies available to Bank under the Bank Loan Documents, or at law or in equity, including, but not limited to, all rights and remedies available to a secured party under the California Commercial Code, and/or (b) exercise all rights of Borrower under, or in connection with, the Permanent Documents.

4. **Consent.**

Permanent Lender consents to the assignment by Borrower to Bank of the Permanent Loan Collateral and Borrower's interest in and to the Permanent Loan as described in Paragraph 3, above. Permanent Lender and Borrower hereby acknowledge the appointment of Bank as agent and attorney-in-fact of Borrower pursuant to the terms of the Bank Loan Documents. Permanent Lender agrees to accept, and Borrower agrees not to object to, performance by Bank of Borrower's obligations in accordance with the Permanent Documents. Permanent Lender hereby agrees to disburse the proceeds of the Permanent Loan directly to Bank. Borrower and Permanent Lender hereby represent and warrant to Bank that a true, correct and complete copy of the Permanent Commitment (and all amendments, modifications and supplements thereto) is attached hereto as **Exhibit B**. The Permanent Commitment and the other Permanent Documents shall not be amended, modified, supplemented or, prior to the disbursement of all of the proceeds of the Permanent Loan, surrendered, cancelled or terminated, without in each instance the prior written consent of Bank.

5. **Right to Cure Default; Substitute Obligor.**

If Borrower has failed to perform any of its obligations under the Permanent Commitment or other Permanent Documents, or has failed to timely satisfy any condition to the funding of the Permanent Loan, which, subject to Section 2, above, would give Permanent Lender the right to terminate or withhold disbursements of the Permanent Loan, Permanent Lender shall give Bank prompt written notice of such fact. Permanent Lender shall not exercise any right it may have to terminate its obligation to disburse the proceeds of the Permanent Loan or withhold such disbursements, or exercise any other right or remedy, as a result of such failure (and the obligation of Permanent Lender to fund the Permanent Loan shall not terminate or expire as a result of such failure) so long as Bank either (a) within ninety (90) days after Bank's receipt from Permanent Lender of written notice of such failure, cures such failure, or (b) (i) within ninety (90) days after Bank's receipt from Permanent Lender of written notice of such failure, commences proceedings to acquire title to the Project by foreclosure or similar proceedings in the nature thereof, (ii) thereafter diligently prosecutes such proceedings (subject to the effect of any stay, automatic, or otherwise, or similar order in any bankruptcy or other insolvency proceeding), and (iii) within a reasonable period of time after Bank (or its affiliate or any approved substitute obligor described below) acquires title to the Project, Bank, its affiliate or such substitute obligor proceeds to cure such failure (provided, however, that any failure under the Permanent Documents which (a) arose as a result of a breach or default under the Loan Documents, (b) arose as a result of the transfer of the Project to Bank, an affiliate of Bank or any approved substitute obligor described below), or (c) relates to the identity, existence, financial condition or creditworthiness of Borrower, its partners or other principals, shall be deemed cured upon the acquisition of the Project by Bank, any affiliate of Bank or any approved substitute obligor described below. Bank may assign its rights under this Agreement to any affiliate of Bank (and in the event of such assignment all references to "Bank" in this Agreement shall be deemed references to such affiliate of Bank). In addition, Bank may, with the prior written consent of Permanent Lender (which consent shall not be unreasonably withheld or delayed) assign its rights under this Agreement to a substitute obligor acquiring title to the Project, either by foreclosure, deed in lieu of foreclosure or other means (in which event all references in this Agreement to Bank shall be deemed references to such approved substitute obligor). Upon the cure of any failure described above in accordance with the procedures described above, Permanent Lender shall recognize Bank, Bank's affiliate or such substitute obligor as the "borrower" under the Permanent Documents and shall fund the proceeds of the Permanent Loan to such substitute "borrower" in accordance with the schedule set forth in Section 2, above.

6. **Assignment of Contracts and Agreements.**

As partial security for the repayment of the Loan, Bank has received an assignment from Borrower of the construction contract and the architectural contract entered into by Borrower, for the construction of, and for architectural services provided in relation to, the Improvements (collectively, the "***Project Contracts***"). Permanent Lender hereby subordinates any lien or other interest Permanent Lender now has, or hereafter acquires, in, to or under the Project Contracts, to the assignment of the Project Contracts made by Borrower to Bank.

7. **Representations and Warranties of Permanent Lender.**

Permanent Lender agrees, represents and warrants as follows:

7.1 The Permanent Commitment is in full force and effect (and has not been amended, modified, supplemented, terminated or cancelled). Permanent Lender is not aware of any condition, event, act or omission that constitutes, or but for the passage of time or giving of notice, or both, would constitute, a breach, violation or default under the Permanent Commitment or the other Permanent Documents; and

7.2 No condition precedent or other obligation of Borrower under the Permanent Commitment or the other Permanent Documents to the further disbursement of the Permanent Loan funds remains unsatisfied, other than as set forth in this Agreement.

7.3 The Permanent Commitment has not previously been assigned or otherwise transferred by any party thereto.

8. **Modification of Permanent Documents.**

Permanent Lender shall not amend, modify or supplement the Permanent Documents or enter into or require any material additional agreement with or from Borrower in connection with the Permanent Loan, the Permanent Documents or the Project without the prior written consent of Bank.

9. **Notice of Defaults Under Permanent Documents.**

Permanent Lender shall deliver to Bank a copy of any notice given by Permanent Lender to Borrower with respect to any default under any of the Permanent Documents. Such copy will be delivered in the same manner and at the same time as the corresponding notice to Borrower.

10. **Notices.**

All notices given under this Agreement must be in writing and will be served effectively upon delivery, or if mailed, upon the first to occur of receipt or the expiration of forty-eight (48) hours after deposit in certified United States mail, postage prepaid, sent to the party at its address appearing below its signature. Those addresses may be changed by any party by notice to all other parties. Service of any notice on any one Borrower will be effective service on Borrower for all purposes.

11. **Exhibits.**

All exhibits described in and attached to this Agreement are incorporated by this reference.

12. **Definitions.**

Capitalized terms used in this Agreement and not otherwise defined have the meanings given in the Loan Agreement.

13. **Interpretation.**

Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Agreement are for convenience only and do not define or limit any terms or provisions. The word “include(s)” means “include(s), without limitation,” and the word “including” means “including, but not limited to.” No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Agreement. Time is of the essence in the performance of this Agreement by Borrower.

14. **Assignment.**

Permanent Lender shall not assign its rights or obligations under this Agreement without the written consent of Bank.

15. **Specific Performance.**

Bank is entitled to specific performance of the covenants, agreements, rights and options contained in this Agreement.

16. **Amendments; Governing Law.**

This Agreement may be amended only by a written agreement signed by Bank, Permanent Lender and Borrower. This Agreement is governed by the laws of the State of California, without regard to the choice of law rules of that State.

17. **Counterparts.**

This Agreement and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts constitute but one and the same document.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first indicated above.

BANK:

U.S. BANK NATIONAL ASSOCIATION,
a national banking association

By: _____
[Name]
[Title]

Address:

U.S. Bank National Association
1307 Washington Avenue, Suite 300
St. Louis, Missouri 63103
Attention: Director of CLD Asset Management

SUBORDINATE LENDER:

ROCKY MOUNTAIN COMMUNITY REINVESTMENT CORPORATION,
a Utah nonprofit corporation

By: _____
[Name]
[Title]

Address:

Rocky Mountain Community Reinvestment Corporation
64 E. Winchester Street, Suite 230
Salt Lake City, Utah 84107

BORROWER:

APACHE JUNCTION VILLAS, LLC,
an Arizona limited liability company

By: AJ Villas Management, LLC,
an Arizona limited liability company,
its Managing Member

By: Adams Construction and Management Company, Inc.,
a Utah corporation,
its Manager

By: _____
Gregory A. Wagner
President

EXHIBIT A

Legal Description of Property

EXHIBIT B

Permanent Commitment

[See Attached]