

## **FIRST AMENDMENT AND MODIFICATION AGREEMENT**

**THIS FIRST AMENDMENT AND MODIFICATION AGREEMENT** (the “Amendment”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (“City”), and **101 APARTMENT DEVELOPERS, LLC**, a Colorado limited liability company, whose address is 455 Sherman Street, Suite 205, Denver, Colorado 80203 (“Borrower”), individually, a “Party” and collectively, the “Parties.”

### **RECITALS:**

WHEREAS, the Parties entered into a loan agreement dated December 13, 2018 (the “Loan Agreement”), relating to a loan to Borrower in the original principal amount of Two Million and Three Hundred Thousand Dollars and No/100 Dollars (\$2,300,000.00) (the “Loan”); and

WHEREAS, the Parties entered into a promissory note evidencing the terms of the Loan (the “Promissory Note”) and the Borrower recorded a covenant against certain real property owned and developed by the Borrower (the “Property”) securing such Property for use as affordable housing in conformance with the terms of the Loan Agreement (the “Covenant”); and

WHEREAS, repayment of the Promissory Note was further secured by a deed of trust recorded as a lien against the Property (the “Deed of Trust”); and

WHEREAS, collectively, the Loan Agreement, the Promissory Note, the Covenant and the Deed of Trust shall be referred to herein as the “Loan Documents;” and

WHEREAS, Section 3 of the Loan Agreement authorized the Executive Director of the City’s Office of Economic Development (“OED”), or the Executive Director’s designee, to execute documents necessary to accomplish the loan described in the Loan Agreement and to subordinate the City’s lien securing repayment of such loan; and

WHEREAS, the since the execution of the Loan Agreement, the City has reorganized its department responsible for overseeing housing loans, such as those evidenced from the Loan Agreement, from OED to the City’s Department of Housing Stability (“HOST”); and

WHEREAS, the Parties wish to modify Section 3 of the Loan Agreement to correctly identify the City personnel authorized to accomplish the loan as described in the Loan Agreement and to subordinate the City's lien securing repayment of such loan.

**NOW THEREFORE**, in consideration of the premises herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and the Parties' mutual covenants and obligations, the Parties agree as follows:

1. Section 3 of the Loan Agreement shall be replaced and restated as follows in its entirety:

**“3. SUBORDINATION AND ADDITIONAL DOCUMENTS:** The Executive Director (the “Executive Director”) of the City’s Department of Housing Stability (“HOST”), or permitted designee, is authorized to execute documents necessary to accomplish the loan as set forth herein and subordinate the lien of the City’s Deed of Trust, so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit D**; (ii) all other documents are in a form satisfactory to the City Attorney; (iii) encumbrances prior to the City’s Deed of Trust do not exceed \$28,000,000.00; (iv) Borrower is not then-in-default of its obligations pursuant to the Loan Agreement, the Promissory Note, the Covenant, or the Deed of Trust; and (v) all additional financing for the Project is committed.

The Executive Director, or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust to a land use restriction agreement, in form attached as **Exhibit F-1**, so long as (i) encumbrances prior to the City’s Deed of Trust do not exceed \$28,000,000.00; and (ii) Borrower is not then-in-default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Covenant, or the Deed of Trust.

The Executive Director, or permitted designee, is also authorized to execute documents necessary to consent to the transfer of the Property and the Project from

Borrower to an affiliate of Borrower (“New Borrower”) so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City’s Deed of Trust do not exceed \$28,000,000.00; and (iii) Borrower is not then-in-default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Covenant, or the Deed of Trust.

In connection with the transfer of the Property and Project from Borrower to New Borrower, Borrower intends to assign to New Borrower, and intends that New Borrower will assume from Borrower, the Loan and all of the rights and obligations of Borrower under this Loan Agreement, the Promissory Note, the Covenant, the Deed of Trust and all other documents evidencing and/or securing the Loan. The Executive Director, or permitted designee, is authorized to execute such documents as are deemed necessary in connection with the assignment of the Loan from Borrower to New Borrower so long as (i) the transfer and the documentation relating to such assignment and assumption are in form satisfactory to the City Attorney; (ii) encumbrances prior to the City’s Deed of Trust do not exceed \$28,000,000.00 in principal amount; and (iii) Borrower is not then-in-default of its obligations under the Loan Agreement, the Promissory Note, the Covenant or the Deed of Trust.

Borrower shall notify of its intent to transfer the Property and assign the Loan by delivering to the City a notice of such transfer and assignment at least thirty (30) days prior to the proposed transfer and assignment date.”

2. A new **Exhibit F-1**, entitled “Partial Subordination to Land Use Restriction Agreement,” as attached hereto and incorporated herein, shall be incorporated into the Loan Agreement.

3. The Loan Documents are hereby modified to change all references of OED to the City’s Office of Housing Stability (“HOST”), and all references of the Executive Director to be the Executive Director of HOST, or permitted designee.

4. Except as herein amended, the Loan Documents continue in effect, and are affirmed and ratified in each and every particular. The Loan Documents are hereby modified to reflect the amended terms of the Loan Agreement.

5. This Amendment will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

6. The Borrower consents to the use of electronic signatures by the City. The Amendment, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Amendment solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Amendment in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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**[SIGNATURE PAGES TO FOLLOW]**

**Contract Control Number:**  
**Contractor Name:**

OEDEV-201952558-01[201738188-01]  
101 APARTMENT DEVELOPERS, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at  
Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

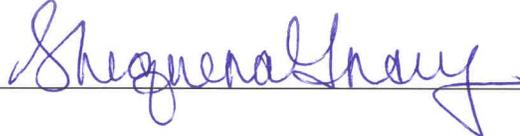
OEDEV-201952558-01[201738188-01]  
101 APARTMENT DEVELOPERS, LLC

By:  \_\_\_\_\_

Name: Dev Ozda  
(please print)

Title: managing member  
(please print)

ATTEST: [if required]

By:  \_\_\_\_\_

Name: Shequena Gray  
(please print)

Title: Executive Assistant  
(please print)

EXHIBIT F-1

Record and Return to:  
Colorado Housing and Finance Authority  
PO Box 60  
Denver, CO 80201  
Attention: Paula Harrison

**PARTIAL SUBORDINATION TO LAND USE RESTRICTION AGREEMENT**

\_\_\_\_\_ (the "Lender") provides to the Colorado Housing and Finance Authority (the "Authority") this partial subordination to Land Use Restriction Agreement with respect to the real property described in Exhibit A attached hereto (the "Land").

RECITALS

1. \_\_\_\_\_ is the owner ("Owner") of the multifamily rental housing project located on the Land (the "Project") and has applied to the Authority for an allocation of low-income housing credits ("Credits") with respect to the Project pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code").
2. The Lender is the beneficiary of a deed of trust covering the Land and the Project.
3. Section 42(h)(6) provides that Credits are not allowed unless an "extended low-income housing commitment" is in effect with respect to the Project in the form of an agreement between the Authority and the Owner (the "Land Use Restriction Agreement") which is recorded as a restrictive covenant against and running with the Land.
4. Although the Land Use Restriction Agreement terminates in the event of foreclosure, Section 42(h)(6)(E)(ii) of the Code requires that certain limitations as to termination of tenancies and rent increases survive such foreclosure for a period of three years.
5. To assure the survival of the limitations described in said Section 42(h)(6)(E)(ii), the Authority requires, as a condition to its execution of the Land Use Restriction Agreement, that the holders of all security interests in the Land recorded prior to the recording of the Land Use Restriction Agreement acknowledge and agree to the priority of the provisions of Section 42(h)(6)(E)(ii) of the Code.

SUBORDINATION AGREEMENT

Lender hereby consents to the recording of the Land Use Restriction Agreement as a restrictive covenant encumbering and running with the Land, and acknowledges and agrees that those provisions of the Land Use Restriction Agreement which set forth the requirements of Section 42(h)(6)(E)(ii) of the Code are superior to Lender's security interest and shall continue in full force and effect for a period of three (3) years following the date of acquisition of the Project by foreclosure (or instrument in lieu of foreclosure).

IN WITNESS WHEREOF, Lender has caused this Agreement to be executed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Lender)  
By: \_\_\_\_\_

STATE OF COLORADO ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires: \_\_\_\_\_.

(S E A L)

\_\_\_\_\_  
Notary Public

Exhibit A  
Legal Description