

**WHEN RECORDED MAIL TO:**

Attention: Stephanie Swift  
201 W. Colfax Ave., Dept. 204  
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

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**SECOND AMENDMENT AND MODIFICATION AGREEMENT**

**THIS SECOND AMENDMENT AND MODIFICATION AGREEMENT** (the “Second Amendment”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **DEL NORTE NEIGHBORHOOD DEVELOPMENT CORPORATION**, a Colorado nonprofit corporation, whose address is 3275 West 14th Avenue, Unit 202, Denver, Colorado 80204 (“Borrower” or “Contractor” and together with the City, the “Parties”).

**WITNESSETH:**

**WHEREAS**, the Parties entered into that certain Loan Agreement dated November 19, 2012, as amended by the Amendatory Agreement dated February 7, 2014 and recorded on February 10, 2014 at Reception No. 2014015097 of the records of the City and County of Denver, State of Colorado, relating to a loan of \$1,000,000.00 to provide funds to be utilized for implementing program activities related to the Neighborhood Stabilization Program 2 (the “Loan Agreement”); and

**WHEREAS**, on behalf of the Borrower, Del Norte Housing Development, LLC (the “Owner”) executed that certain deed of trust (the “Deed of Trust”) for the benefit of the City, dated December 24, 2012, and recorded on December 27, 2012 at Reception No. 2012179341 of the records of the City and County of Denver, State of Colorado, and that certain Rental and Occupancy Covenant (the “Covenant”) dated December 24, 2012, and recorded on December 27, 2012 at Reception No. 2012179340 of the records of the City and County of Denver, State of Colorado, each encumbering the following described property:

A PORTION OF BLOCK “A”, NEW AVONDALE, RECORDED IN THE CITY AND COUNTY OF DENVER IN THE CLERK AND RECORDER OFFICE, STATE OF COLORADO, ON DECEMBER 19, 1963 AT BOOK 25 PAGE 2, BEING IN THE NORTHWEST ¼ OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTH, WEST CORNER OF SAID BLOCK “A”, THENCE SOUTH 89°59’10” EAST, A DISTANCE OF 1.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00°00'50" EAST ALONG THE WEST LINE OF SAID BLOCK "A" A DISTANCE OF 111.00 FEET;  
THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 117.79 FEET;  
THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 12.50 FEET;  
THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 120.00 FEET;  
THENCE NORTH 00°00'00" EAST, A DISTANCE OF 12.50 FEET;  
THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 64.85 FEET;  
THENCE SOUTH 00°00'50" WEST, A DISTANCE OF 126.52 FEET;  
THENCE ONE FOOT NORTH OF, AND PARALLEL WITH, THE SOUTHERLY LINE OF SAID BLOCK A THE FOLLOWING THREE (3) COURSES:  
1. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 360.00 FEET, A CENTRAL ANGLE OF 05°15'38", A CHORD THAT BEARS NORTH 87°22'58" WEST A DISTANCE OF 33.04 FEET, AND AN ARC LENGTH OF 33.05 FEET;  
2. SOUTH 90°00'00" WEST 255.62 FEET TO A POINT OF CURVE;  
3. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 14.00 FEET, A CENTRAL ANGLE OF 90°00'51", A CHORD THAT BEARS NORTH 44°59'35" WEST A DISTANCE OF 19.80 FEET, AND AN ARC LENGTH OF 21.99 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO THE CITY AND COUNTY OF DENVER, A COLORADO MUNICIPAL CORPORATION AND HOME RULE CITY RECORDED SEPTEMBER 30, 2011 UNDER RECEPTION NO. 2011109150.

BASIS OF BEARINGS: BEARING ARE BASED ON THE SOUTH LINE OF BLOCK "A", NEW AVONDALE, MONUMENTED AT THE WEST END BY A NUMBER 5 REBAR WITH A BLUE PLASTIC CAP, LS 38035 AND AT THE EAST END BY A CHISELED "X" IN THE SIDEWALK; BEARING SOUTH 90°00'00" WEST, WITH ALL BEARINGS RELATIVE HEREON.

City and County of Denver,  
State of Colorado.

also known and numbered as 3275 West 14th Avenue A/K/A 1402 Irving Street, Denver, Colorado (the "Property"); and

**WHEREAS**, the Deed of Trust and the Covenant secure the repayment of the indebtedness evidenced by that certain Promissory Note dated December 24, 2012 (the "Promissory Note"); and

**WHEREAS**, the Owner sold the Property, subject to the Deed of Trust and the Covenant, to Avondale Apartments LLLP, a Colorado limited liability limited partnership ("Avondale"), pursuant to a Special Warranty Deed dated June 13, 2013 and recorded in the real property records of the City and County of Denver, Colorado on July 2, 2013 at Reception No. 2013096198 (the "Land Transfer"); and

**WHEREAS**, the Avondale desires to assume the Owner's rights and obligations pursuant to the Deed of Trust and the Covenant (the "Assumption") for the benefit of the Borrower and

the City, although Avondale has not assumed the obligations of Borrower under the Loan Agreement or the Promissory Note; and

**WHEREAS**, the Borrower has converted the Property into condominium units, as further described in that certain Declaration of Condominium for Avondale Condominiums dated as of February 10, 2015 (the “Declaration”) and recorded in the real property records of the City and County of Denver, Colorado on December 23, 2015 at Reception No. 2015177312 and the related condominium map was recorded in the real property records of the City and County of Denver, Colorado on December 23, 2015 at Reception No. 2015177313; and

**WHEREAS**, the Parties wish to modify the terms and conditions of the Loan Agreement, Promissory Note, Covenant, Deed of Trust, and any other documents evidencing or securing the City’s loan (together, the “Loan Documents”), to: (a) consent to the Land Transfer, the Assumption, and the new condominium regime, (b) amend the Deed of Trust and Covenant to reflect the new condominium regime, and release certain condominium units from the lien of the Deed of Trust and Covenant, and (c) modify certain repayment terms contained therein;

**NOW, THEREFORE**, in consideration of the premises herein contained and other good and valuable consideration, the adequacy of which is acknowledged, the Parties hereby modify the Loan Documents as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Loan Agreement.
2. The City hereby retroactively consents to the Land Transfer.
3. The City hereby consents to the Assumption.
4. The City hereby consents to and ratifies the conversion of the Property into condominium units including a residential unit (“Residential Unit”) and commercial units (“Commercial Units”) and to the Declaration.
5. The City hereby agrees to release and hereby releases the Commercial Units from the Deed of Trust and the Covenant and further agrees that the Deed of Trust and the Covenant are hereby amended so that the only property encumbered thereby is the Residential Unit, described as the following property:

PARCEL A:  
MULTIFAMILY HOUSING UNIT 1, AVONDALE CONDOMINIUMS, CITY AND COUNTY OF DENVER, STATE OF COLORADO, ACCORDING TO THE CONDOMINIUM MAP RECORDED DECEMBER 23, 2015 AT RECEPTION NO.

2015177313, AND THE DECLARATION OF CONDOMINIUM FOR AVONDALE CONDOMINIUMS RECORDED DECEMBER 23, 2015 AT RECEPTION NO. 2015177312, BOTH IN THE RECORDS OF THE CLERK AND RECORDER OF THE COUNTY OF DENVER, STATE OF COLORADO, AS AMENDED FROM TIME TO TIME.

**PARCEL B:**

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR INGRESS AND EGRESS, PASSAGE AND ACCOMMODATION OF PEDESTRIANS; PASSAGE OF VEHICLES OVER AND ACROSS SHANGHAI DRIVEWAY; PARKING OF VEHICLES IN THE PARKING SPACES DEPICTED ON THE SHANGHAI DRIVEWAY; DRAINAGE AND UTILITY FACILITIES, AS MORE PARTICULARLY DESCRIBED IN SECTIONS 3.2, 3.3 AND 3.4 OF THE RECIPROCAL EASEMENT AGREEMENT AND AGREEMENT REGARDING COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED MARCH 10, 2011 UNDER RECEPTION NO. 2011026782.

**PARCEL C:**

NON-EXCLUSIVE EASEMENTS FOR THE PASSAGE OF VEHICLES AND THE PASSAGE AND ACCOMMODATION OF PEDESTRIANS OVER AND ACROSS THE SHARED DRIVEWAY AS SET FORTH IN SECTION 4.12 OF DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS OF MILE HIGH VISTA RECORDED APRIL 18, 2012 UNDER RECEPTION NO. 2012051870.

6. The Director of the City's Office of Economic Development or permitted designee, is authorized to execute documents necessary to (i) formally consent to or waive any possible event of default under the Deed of Trust caused by the Land Transfer; (ii) consent to the Assumption and the conversion of the Property into condominium units, (iii) subordinate the Deed of Trust to the Declaration, (iv) amend the Deed of Trust and the Covenant to release the Commercial Units, and (v) to accomplish this Second Amendment so long as (a) such documents are in a form satisfactory to the City Attorney; (b) such documents impose no financial obligation, contingent or otherwise, upon the City; and (c) Borrower is not then in default of its obligations pursuant to the Loan Documents.

7. The payment terms of the Promissory Note are hereby amended as follows:

a. Commencing on the date of this Second Amendment, the Promissory Note shall bear interest at the rate of two percent (2%) per annum.

b. Commencing on July 1, 2016, and continuing annually on the first day of July each year thereafter through and including July 1, 2041, the Borrower shall make principal and interest payments in an amount not to exceed Forty-Eight Thousand Five Hundred Dollars

and NO Cents (\$48,500.00) (“Annual Payments”). The Annual Payments shall be calculated in an amount equal to Surplus Cash Flow (as defined below) of the Residential Unit on an annual basis. In the event Surplus Cash Flow is insufficient to pay in full any Annual Payment due hereunder, the unpaid balance thereof will be added to the subsequent Annual Payments paid from available Surplus Cash Flow. The Forty-Eight Thousand Five Hundred Dollars and NO Cents (\$48,500.00) maximum Annual Payment will increase to include the unpaid amount of the prior Annual Payment. Simple interest will continue to accrue on unpaid principal.

The capitalized terms used herein shall have the following definitions:

“*Cash Flow*” shall have the meaning assigned to it in the Partnership Agreement.

“*Partnership Agreement*” means that certain Amended and Restated Agreement of Limited Partnership of Avondale Apartments LLLP dated June 24, 2013 by and among Del Norte Avondale LLC, Del Norte Neighborhood Development Corporation, and Wells Fargo Affordable Housing Community Development Corporation.

“*Surplus Cash Flow*” means Cash Flow less any cash distributions described in Section 4.02(a)(i)-(viii) of the Partnership Agreement.

c. The entire unpaid balance of principal and accrued interest due shall become payable on or before July 1, 2042, upon the transfer or sale of the Property, except in the event of a sale or transfer to an affiliate of the Borrower and written notice to OED, or upon the expiration of the Covenant, and at such time, such payment shall not be subject to Surplus Cash Flow.

**8.** The Loan Documents are hereby amended to reflect the amended terms of the Promissory Note.

**9.** The Deed of Trust and the Covenant are each hereby amended to encumber the Residential Unit until July 1, 2042.

**10.** Borrower consents to the use of electronic signatures by the City. This Second 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 Second 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 Second 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.

- 11.** Except as modified herein, the Loan Documents remain unmodified.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

**Contract Control Number:**

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:

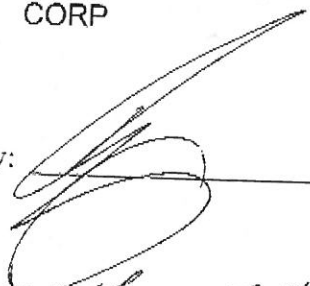
By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** OEDEV-201208314-02  
**Contractor Name:** DEL NORTE NEIGHBORHOOD DEVELOPMENT CORP

By:   
Name: Harvin Kelly  
(please print)

Title: Executive Director  
(please print)

**ATTEST: [if required]**

By: Diane E. Vollmer

Name: Diane E. Vollmer  
(please print)

Title: Senior Housing Specialist  
(please print)





DIANE E VOLLNER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID: 9964022204  
MY COMMISSION EXPIRES FEBRUARY 14, 2017

DEL NORTE NEIGHBORHOOD  
DEVELOPMENT CORPORATION, a  
Colorado nonprofit corporation  
IRS No. \_\_\_\_\_

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

Title: Marvin Kelly, Exec. Dir.

**"BORROWER"**

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

Acknowledged before me this 23<sup>rd</sup> day of February 2016, by Marvin Kelly as Executive Director of Del Norte Neighborhood Development Corporation, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 2-14-17

Diane E Vollner  
Notary Public



**DEL NORTE NEIGHBORHOOD  
DEVELOPMENT CORPORATION, a**  
Colorado nonprofit corporation  
IRS No. \_\_\_\_\_

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

Title: \_\_\_\_\_

**“BORROWER”**

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

Acknowledged before me this \_\_\_\_ day of February, 2016, by \_\_\_\_\_ as  
\_\_\_\_\_ of Del Norte Neighborhood Development Corporation, a Colorado  
nonprofit corporation.

Witness my hand and official seal.

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