

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 organized pursuant to the Constitution of the State of Colorado (“City”), and **DENVER LEASED HOUSING ASSOCIATES VI, LLLP**, a Minnesota limited liability limited partnership, whose address is 2905 Northwest Boulevard, Suite 150, Plymouth, MN 55441 (“Borrower”), each individually a “Party” and collectively the “Parties.”

RECITALS:

WHEREAS, the Parties entered into a loan agreement dated November 8, 2017 (the “Loan Agreement”), relating to a loan to Borrower in the original principal amount of Three Million Dollars and No/100 Dollars (\$3,000,000.00) (the “Loan”); and

WHEREAS, the Parties entered into a promissory note dated January 29, 2018 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 dated January 29, 2018 and recorded on January 30, 2018 at Reception No. 2018011537 as a lien against the Property (the “Deed of Trust”); and

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

WHEREAS, since the execution of the Loan Agreement, the City has reorganized the responsibilities of its departments and has transferred the responsibility for overseeing housing loans from the Office of Economic Development (“OED”) to the Department of Housing Stability (“HOST”); and

WHEREAS, the Parties wish to amend and modify the terms and conditions of the Loan Documents to modify the subordination terms contained in Section 3 of the Loan Agreement and to modify references to HOST from OED; and

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. All references to the "Office of Economic Development" and "OED" in the Loan Documents shall be replaced to read "Department of Housing Stability" and "HOST," respectively.

2. Section 3 of the Loan Agreement is replaced with the following:

"3. **SUBORDINATION**: 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 subordinate the lien of the City's Deed of Trust and Covenant to (a) other financing for the Property and (b) a land use restriction agreement so long as (i) the subordination agreements are substantially in the forms attached hereto as **Exhibit D** or **Exhibit F**; (ii) encumbrances prior to the City's Deed of Trust do not exceed Sixty Million and No/100 Dollars (\$60,000,000.00); (iii) 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 (iv) all additional financing for the Project is committed."

3. A new **Exhibit F**, entitled "Partial Subordination to Land Use Restriction Agreement," as attached hereto and incorporated herein, and shall be incorporated into the Loan Agreement.

4. The Loan Documents are hereby modified to reflect the amended terms of the Loan Agreement.

5. Except as herein amended, the Loan Documents continue in effect, and are affirmed and ratified in each and every particular.

6. 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.

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[SIGNATURE PAGES TO FOLLOW]

Contract Control Number:
Contractor Name:

OEDEV-201952757-01, 201735583-01
DENVER LEASED HOUSING ASSOCIATES VI, LLLP

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-201952757-01, 201735583-01
DENVER LEASED HOUSING ASSOCIATES VI, LLLP

By: Ronald G Meli

Name: RONALD G. MELI
(please print)

Title: VICE PRESIDENT & PROJECT PARTNER
(please print)

ATTEST: [if required]

By: B-J T-L

Name: BENJAMIN J. TAYLOR
(please print)

Title: SENIOR DEVELOPMENT ASSOCIATE
(please print)

EXHIBIT F

Record and Return to:
Colorado Housing and Finance Authority
1981 Blake Street
Denver, CO 80202
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 _____, 2013, by _____ as _____ of _____.

My commission expires: _____.

(S E A L)

Notary Public

Exhibit A
Legal Description