

**WHEN RECORDED MAIL TO:**  
Office of Economic Development  
Attention: Linda Henderson  
201 W. Colfax Ave., Dept. 204  
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

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**THIRD AMENDMENT AND MODIFICATION AGREEMENT**

**THIS THIRD AMENDMENT AND MODIFICATION AGREEMENT** (this "Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and **DENVER BUILDING HOUSING, LTD.**, a Colorado limited partnership ("Debtor"), whose address is 1555 California Street, Suite 200, Denver, CO 80202.

**WITNESSETH:**

**WHEREAS**, Debtor and City entered into that certain Development and Loan Agreement dated December 4, 1992, as amended by that certain Amendment and Modification Agreement dated December 18, 1995, and that certain Second Amendment to Promissory Note (Nonrecourse) and Development and Loan Agreement dated July 23, 2003 (as amended, the "Loan Agreement"), relating to a loan of Urban Development Action Grant ("UDAG") funds in the amount of \$1,860,434.00.

**WHEREAS**, Debtor executed that certain Combination Deed of Trust and Security Agreement for the benefit of the City, dated December 14, 1992, and recorded on December 24, 1992, at Reception No. 9200153487 of the records of the City and County of Denver, State of Colorado, as amended by that certain Amendment and Modification Agreement dated December 18, 1995, and that certain Second Amendment to Combination Deed of Trust and Security Agreement dated August 1, 2003, and recorded August 11, 2003, at Reception No. 2003165219 of the records of the City and County of Denver, State of Colorado (as amended, the "Deed of Trust"), and encumbering certain real property more particularly described on **Exhibit A** (the "Property"); and

92-946-C

**WHEREAS**, the Deed of Trust secures the repayment of the indebtedness evidenced by that certain Promissory Note (Nonrecourse) executed by Debtor for the benefit of the City, dated December 14, 1992, as amended by that certain Amendment and Modification Agreement dated December 18, 1995, and that certain Second Amendment to Promissory Note (Nonrecourse) and Development and Loan Agreement dated July 23, 2003 (as amended, the "City Promissory Note"); and

**WHEREAS**, the Parties wish to modify the terms and conditions of the Loan Agreement, City Promissory Note, Deed of Trust, and any other documents evidencing or securing the City's loan (together, the "Loan Documents") upon the terms and conditions set forth in this Amendment;

**NOW, THEREFORE**, in consideration of the premises herein contained and other good and valuable consideration, the adequacy of which is acknowledged, the parties agree as follows:

1. As of January 1, 2010, the parties confirm that (i) the outstanding principal balance of the City's loan is equal to \$3,123,312.00, (ii) the outstanding accrued interest on the City's loan is equal to \$1,562,725.63, and (iii) the total outstanding balance, including principal and interest, of the City's loan equals \$4,686,037.63. The City hereby agrees to write down the total amount of the City's loan to \$3,237,815.

2. The principal amount of the City Promissory Note is amended to \$3,237,815 as of January 1, 2010.

3. The interest rate as set forth in the first paragraph of the City Promissory Note of "7.5%" is deleted and replaced with "one percent (1.0%)."

4. The third paragraph of the City Promissory Note is deleted and replaced with the following: "Interest accrual shall commence on January 1, 2010 and be payable on or before December 1<sup>st</sup> of each year. The annual interest payment on each December 1 shall be \$32,378.15, except that the payment on December 1, 2010 shall be \$29,679.97 less the amount of payments already made year to date." Debtor's final interest payment shall be due and owing on December 1, 2049 and thereafter no interest shall be charged or accrue. The principal amount of the Note shall only be payable to the extent that Net Proceeds as defined in this Third Amendment and Modification Agreement are received. The Note shall terminate December 31, 2099

5. The principal of the City Promissory Note shall only be paid upon the realization, and only to the extent of fifty percent (50%) of the Net Proceeds, received by Debtor upon sale of the

Property. The other fifty percent (50%) shall be paid to the Denver Urban Renewal Authority (“DURA”). “Net Proceeds” shall mean the gross receipts from the sale of the Property, including proceeds from loans and any reductions in reserves required with respect to the Property, reduced by all payments on indebtedness secured by a lien senior or prior to the Deed of Trust, documented disbursements for capital improvements to the Property, and reasonable closing and transactional costs of the sale or refinancing and other documented disbursements paid at closing with respect to the Property. Prior to December 31, 2049, the City Office of Economic Development Director’s (“OED Director”) written approval, which approval shall be reasonably considered based upon the interests of the City, shall be required for a sale of the Property that will not generate sufficient Net Proceeds to repay the City Promissory Note. After December 31, 2049, City consent shall not be required for any sale and in the event that Net Proceeds do not equal enough to pay off both the City Promissory Note and the DURA Note (defined below), then the Net Proceeds shall be applied equally between the principal of the City Promissory Note and the principal of the DURA Note. In the event of a sale of less than all of the Property resulting in a partial payment of the City Promissory Note, the annual interest payment shall be recalculated based upon the one percent (1%) interest rate and the remaining principal balance. Debtor’s obligation to repay the principal of the City Promissory Note from Net Proceeds shall terminate on December 31, 2099.

6. Prior to or simultaneous with the execution of this Amendment, DURA shall forgive all accrued interest on its loans secured by the Property, equaling \$3,237,815.00, by executing a zero percent (0%) Promissory Note (the “DURA Note”), so that repayment of the DURA Note shall only be paid upon the realization, and only to the extent of fifty percent (50%) of the Net Proceeds as defined above.

7. Upon the OED Director’s prior written approval, which approval shall not be unreasonably withheld, the Debtor may refinance and/or incur additional debt for purposes of generating capital for improvements to the Property. A refinancing for purposes of generating capital for improvements to the Property shall not be considered a sale subject to payment of the City’s fifty percent (50%) of gross receipt of the sale of the Property as set forth in Section 5 above. The Director of OED, or his/her designee, is hereby authorized to execute any and all documents necessary to effectuate the foregoing, including subordination of the City’s loan.

8. The Deed of Trust is hereby amended so that it continues to act as security for the City Promissory Note and all of the covenants and obligations contained therein. Section 3 of the Deed of Trust is replaced in its entirety to read:

“3. Liens. Subject to paragraph 7 hereof relating to contests, the Grantor shall not create, incur, or suffer to exist any lien, security interest, encumbrance, or charge on the Mortgaged Property or any part thereof, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable, any permitted encumbrance listed in Exhibit B hereto or as consented to by the Beneficiary, by subordination agreement or otherwise. Subject to paragraph 7 hereof, the Grantor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.”

9. The City Promissory Note is hereby amended by deleting the fourth paragraph entitled “Sale or Refinancing” and Exhibit A in their entirety.

10. To the extent that the terms of the City Promissory Note, as amended, are inconsistent with the terms of the Loan Agreement, then the City Promissory Note, as amended hereby, shall govern.

11. Except as modified herein, the Loan Documents remain unmodified and in full force and effect in accordance with their respective terms.

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the day and year first above written.

**(SIGNATURE PAGE IMMEDIATELY FOLLOWS)**

**ATTEST:**

\_\_\_\_\_  
STEPHANIE Y. O'MALLEY,  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

**APPROVED AS TO FORM:**  
DAVID R. FINE, City Attorney for the  
City and County of Denver

By: \_\_\_\_\_  
Assistant City Attorney

**CITY AND COUNTY OF DENVER**

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

**RECOMMENDED AND APPROVED:**

By:  \_\_\_\_\_  
Deputy Director, Office of Economic  
Development


**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. GE29015-3

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

**"CITY"**

**DENVER BUILDING HOUSING, LTD.,** a  
Colorado limited partnership  
IRS No. 84-1195069

By:  \_\_\_\_\_  
Title:           DIRECTOR          

**"BORROWER"**

**APPROVED:**  
  
**DENVER      URBAN      RENEWAL**  
**AUTHORITY**

By:           See attached            
Title: \_\_\_\_\_

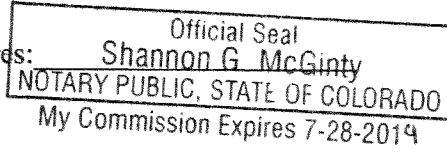
**"DURA"**

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

Acknowledged before me this 16 day of SEPTEMBER 2010, by BILL MOSIER as DIRECTOR of **DENVER BUILDING HOUSING, LTD.**, a Colorado limited partnership.

Witness my hand and official seal.

My commission expires:



Shannon G. McGinty  
Notary Public

**ATTEST:**

\_\_\_\_\_  
STEPHANIE Y. O'MALLEY,  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

**APPROVED AS TO FORM:**  
DAVID R. FINE, City Attorney for the  
City and County of Denver

By: \_\_\_\_\_  
Assistant City Attorney

**CITY AND COUNTY OF DENVER**

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

**RECOMMENDED AND APPROVED:**

By: \_\_\_\_\_  
Deputy Director, Office of Economic  
Development

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By: \_\_\_\_\_  
Manager of Finance  
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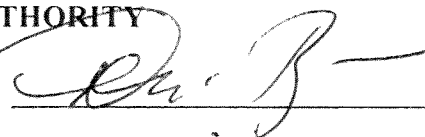
By: \_\_\_\_\_

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

**"BORROWER"**

**APPROVED:**

**DENVER URBAN RENEWAL  
AUTHORITY**

By: 

Title: CHAIR

**"DURA"**

## **EXHIBIT A**

### **(Legal Description)**

Units 15-3 and 15-456, The Denver Building, a Condominium, according to the Declaration of Condominium for The Denver Building, a Condominium, dated as of December 8, 1992, and recorded December 10, 1992, at Reception Number R-92-0146452, as modified by First Amendment recorded July 7, 1993, at Reception Number R-93-0087886, and as modified by Second Amendment recorded December 10, 1996, at Reception Number 9600141052, and as modified by Third Amendment recorded August 21, 2008, at Reception Number 2008115979, and the Condominium Map recorded December 10, 1992, at Reception Number R-92-0146453, and filed in Condominium Plat Book 31, at Pages 93-103, as modified by Amendment No. 1 recorded December 10, 1996, at Reception Number 9600141053, in Plat Book 35, at Pages 60-65,

City and County of Denver  
State of Colorado

Purported Address:  
700 16<sup>th</sup> Street  
Denver, Colorado 80202