

## **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 **ELEVATION COMMUNITY LAND TRUST LLC**, a Colorado limited liability company, whose address is 1114 W. 7<sup>th</sup> Avenue, Suite 101 Denver, Colorado 80204 (“Borrower”), each individually a “Party” and collectively the “Parties.”

### **RECITALS:**

**WHEREAS**, the Parties entered into a loan agreement dated July 17, 2020 (the “Loan Agreement”), relating to a loan to Borrower in the original principal amount of \$3,000,000.00 (the “Original Loan”) whereby the Borrower is required to create for-sale affordable housing dwelling units; and

**WHEREAS**, the Borrower executed a promissory note for the benefit of the City dated August 12, 2020 evidencing the terms of the Loan (the “Note”); and

**WHEREAS**, to secure the Note, the Borrower is required to grant the City one or more deeds of trust on the real property acquired or improved with the loan proceeds; and

**WHEREAS**, the Parties wish to amend and modify the terms and conditions of the Loan Agreement and Note.

**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. The City agrees to lend Borrower an additional \$1,700,000.00 (“Additional Loan Sum”), making the total loan to the Borrower \$4,700,000.00 (the “Total Loan Amount”). Borrower agrees to lend the entire Total Loan Amount to OHA.

2. Borrower will execute an amended Note to evidence and secure the Total Loan Amount.

3. Exhibit A of the Loan Agreement shall be replaced with the Exhibit A-1 attached to this Amendment. The updated Scope of Work marked as Exhibit A-1 is incorporated herein by this reference and shall supersede and the exhibit attached to the Loan Agreement.

4. Section 7, entitled “**RESTRICTIONS ON PROPERTY**,” is amended to add a new subsection C. as follows:

“C. Unit Sale Price. The initial sale price of a Unit may not exceed the maximum sales price for the size of the Unit being sold, as published by HOST. Subsequent sales shall be controlled by the terms of the Land Lease.”

5. The Executive Director of HOST may execute documents necessary to carry out the intent of this Amendment.

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

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

8. 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:**

HOST-202261723-00  
ELEVATION COMMUNITY LAND TRUST 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:**

HOST-202261723-00  
ELEVATION COMMUNITY LAND TRUST LLC

By: Stefka Fanchi

Name: Stefka Fanchi  
(please print)

Title: President & CEO  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

Signature:   
Stefka Fanchi (Jan 28, 2022 10:12 MST)

Email: [sfanchi@elevationclt.org](mailto:sfanchi@elevationclt.org)

**Exhibit A-1  
Scope of Work**

**PROJECT NAME: Elevation Community Land Trust Housing Acquisition and Development**  
**ACTIVITY NAME: Property Acquisition, Rehabilitation, and Construction**

**I. INTRODUCTION**

**A. Period of Performance Start and End Dates: 04/01/2019 – 12/31/2022**

This agreement may be extended two times, in concurrent one-year (12 month) increments without an allocation of additional funds for the activities described herein, with an amendment to the loan agreement, if required.

**B. Project Description**

Elevation Community Land Trust LLC (“Elevation”) to:

- Acquire properties;
- Rehabilitate properties;
- Construct properties.

Properties may be vacant land, or single-family attached or detached residences, or multifamily residences from two to ten units. Every property acquired, rehabilitated, or constructed under this contract must be sold to income qualified households earning no more than 100% of the Area Median Income (“AMI”) for the Denver region as defined by the US Department of Housing and Urban Development (“HUD”). The aggregate HUD AMI of units acquired and sold to income eligible buyers must be at or below 80% AMI.

**C. Amount: \$4,700,000**

**D. Funding Source:**  Affordable Housing Fund

**Organization:** Elevation Community Land Trust LLC

**EIN#:** 61-1862429

1114 W. 7<sup>th</sup> Ave, Suite 101  
Denver, CO 80204

**Contact Person:** Stefka Fanchi, Chief Executive Officer

**Phone:** 720-822-0895

**Email:** sfanchi@elevationclt.org

**Organization Type:**

Non-Profit    For-Profit    Individual    Partnership    Corporation    Publicly Owned    Other

**Council District(s):** Citywide   **Neighborhood(s):** Citywide   **Census Block(s):** N/A

Project/activity located in a Target Area:    Yes    No

**II. ACTIVITY DESCRIPTION**

**A. GENERAL**

The purpose of this agreement is to provide a subsidy from the Department of Housing Stability (“HOST”) of the City and County of Denver (“the City”) to Elevation to acquire properties, perform rehabilitation or new

construction, and to sell completed units to eligible and qualified households earning no more than 100% Median Income (“AMI”) while maintaining an aggregate portfolio under this agreement at 80% AMI. Properties may be unrestricted at the time of acquisition or have an existing affordability restriction (preservation). To the extent feasible and when notified of such a property by HOST, Elevation will focus preservation acquisition on properties that are in the final sale period of an existing covenant. Elevation will also prioritize acquisition opportunities that increase homeownership for Black, Indigenous, and People of Color (BIPOC) households, especially in neighborhoods that have historically suffered from redlining practices and higher rates of involuntary displacement, East Colfax, Skyland, Northeast Park Hill, Cole, Green Valley Ranch, and Montbello based on availability and feasibility.

Elevation will retain ownership of the land in a community land trust to ensure affordability for a minimum of 99 years by executing and recording a land lease with each homeowner. A Deed of Trust in favor of the City will be recorded on the land. At the completion of this agreement, Elevation will have completed the acquisition and/or rehabilitation or construction of at least 87 affordable-for sale homes located in the City.

## **B. ELEVATION’S RESPONSIBILITIES**

Elevation is responsible for carrying out activities in a manner satisfactory to the City and consistent with all standards required as a condition of receiving these funds. Approved uses of funds are:

### **1. Property Acquisition**

Elevation will identify and acquire the following types of properties within the City and County of Denver, subject to the requirements of Section C., that will be placed into the community land trust:

- a. Vacant Land: Vacant parcels suitable for development of single family attached or detached housing. Parcels may be part of a larger site may include market rate housing, affordable rental housing, community facilities, or other joint development that meets defined community needs.
- b. Scattered Site Single Family Properties: Properties may be detached or attached single-family units, townhomes, rowhomes, or condominiums and must be located within the City.
- c. Multifamily Properties: Multifamily properties from two to ten units that may be converted to affordable condominiums.

### **2. Rehabilitation/Construction**

- a. Elevation will manage the rehabilitation or construction of housing units acquired under Section B1 based on a scope of work prepared and managed by Elevation.
- b. All rehabilitation or construction must be performed by licensed general contractors or specialty contractors.
- c. All City code violations discovered at the property must be repaired.
- d. Homes built prior to 1978 will require compliance with HUD’s Lead Based Paint requirements.
- e. Upon completion but prior to sale to the initial homebuyer, the property must pass a Housing Quality Inspection performed by HOST.

### **3. Due Diligence**

Elevation is responsible for all due diligence, completing activities required or implied, to provide completion of a property’s acquisition, rehabilitation, or construction including, but not limited to:

- a. Environmental studies – Phases I, II, and/or City Environmental Review (if required)
- b. Appraisal and appraisal review services
- c. Physical Needs Assessments
- d. Title services
- e. Zoning Compliance
- f. Conveyance document preparation
- g. Surveys, maps and legal descriptions
- h. Construction bids and drawings
- i. Permits

### **4. Compliance/Stewardship Requirements**

Properties acquired under this agreement must be sold to the initial buyer and all subsequent buyers as an “affordable home” as defined by the City’s affordable housing programs. "Affordable unit" or "Affordable

home" is a for-sale home sold to a buyer whose household income is at or below 100% of AMI, as determined by the United States Department of Housing and Urban Development, with adjustments for family size.

- a. Long Term Affordability: Elevation will ensure long term affordability of each property acquired and developed under this agreement by executing a renewable Land Lease with each homeowner that requires affordability for 99 years. Elevation will further secure affordability with the placement of a Deed of Trust on the improvements to ensure that Elevation will be notified of a sale or refinance as part of the chain of title.
- b. Income Qualification for Initial Sales: Elevation is responsible for ensuring that initial buyers of homes acquired and/or developed under this contract are income eligible and qualified. For the purposes of this contract, at the time of sale, the participant household must meet City of Denver's income eligibility guidelines, with household income defined as at or below the current HUD 100% AMI, based on household size, for the City.
- c. Income Qualification for Subsequent Sales: Elevation is responsible for ensuring that subsequent buyers of homes acquired and/or developed under this contract are income eligible and qualified. For the purposes of this contract, the participant household must be low to moderate income, with household income as defined at or below the current HUD 100% AMI, based on household size, for the City.
- d. Notification of Sale: Elevation must provide notification of a sale at least 30 days in advance of the date of the scheduled closing and include the buyer's income verification notification or other sufficient summary information to confirm that the buyer was appropriately income verified.
- e. Portfolio Aggregate Household Income: Elevation will ensure that the aggregate household income of all households that purchase a unit acquired, rehabilitated, or constructed pursuant to this agreement is at or below 80% of AMI. Any time a unit is sold or resold, Elevation must provide the City information to show that the aggregate household income of the purchasers of all units is at or below 80% AMI.
- f. Occupancy Requirements: Elevation will ensure that the homeowner occupies the unit for a minimum of nine months per year. Homeowners must comply with the City's rules and regulations for Short Term Rentals and/or any other applicable local, state, or federal laws regarding rental housing.
- g. City Right to Audit: The City has the right to audit the income qualification documentation for each residential unit buyer and/or Elevation's income qualification process, in each case on an annual basis. The documentation must be sufficient to demonstrate that the purchasing household's total income did not exceed 100% of the HUD AMI based on household size at the time of qualification. Elevation must collect documentation based on the City's income qualification requirements at the time of application and is responsible for obtaining guidance regarding the appropriate documentation from City

#### **C. EXCLUDED ACTIVITIES**

1. No reimbursement will be provided under this contract for units acquired, constructed, or rehabilitated within the Globeville, Elyria, or Swansea neighborhoods.
2. No reimbursement will be provided for the acquisition, construction, or rehabilitation of multifamily properties over ten units.
3. No general operating or administrative costs will be reimbursed under this agreement.
4. No reimbursement will be provided for the following activities:
  - a. Construction or rehabilitation of Accessory Dwelling Units;
  - b. Luxury improvements (i.e. swimming pools, hot tubs, etc.);
  - c. Existing debt service;
  - d. Retiring existing debt;
  - e. Public improvements.

#### **D. REIMBURSEMENT REQUIREMENTS**

1. The City will provide up to \$65,000 per unit to reimburse acquisition, rehabilitation, or construction costs. Changes to this subsidy level may be adjusted upon approval from the Executive Director of HOST.
2. Elevation may request reimbursement of acquisition costs once a property is acquired. HOST will record a deed of trust in favor of the city on the property as a condition of reimbursement.

#### **E. OTHER REQUIREMENTS**

1. Interim Property Management: Elevation will maintain and secure all properties acquired under this contract prior to the sale to the initial homebuyer.
2. Tenant Support: Elevation will ensure that any tenant of an acquired property who is unwilling or unable to purchase the unit has access to organizations and resources that will provide housing navigation and other assistance at the termination of the lease. A tenant of a property acquired pursuant to this Agreement may occupy the acquired property for the remaining term of an existing lease. Elevation shall promptly provide the City with a copy of any lease agreement applicable to a property acquired pursuant to this Agreement. Any lease that Elevation assumes or that is otherwise applicable to a property acquired pursuant to this Agreement may not contain any of the provisions listed below. Elevation agrees to amend and remove such provisions a lease agreement.
  - a. Agreement to Be Sued. Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
  - b. Treatment of Property. Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. However, the owner may dispose of personal property remaining in the unit after the tenant has moved out in accordance with Colorado law.
  - c. Excusing Owner from Responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.
  - d. Waiver of Notice. Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
  - e. Waiver of Legal Proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
  - f. Waiver of Jury Trial. Agreement by the tenant to waive any right to a trial by jury.
  - g. Waiver of Right to Appeal. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge a court decision in connection with the lease.
  - h. Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by tenant to pay attorney fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant.
  - i. Mandatory Supportive Services. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

#### **F. PERFORMANCE MONITORING**

1. The City will monitor the performance of Elevation based on goals and performance standards as stated above along with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract.
2. Elevation must submit to the City an annual report of all sales activity that occurred within the calendar year, including date of sale, buyer name or names, property address, sales price, and verification that the buyer's income is at or below 100% of HUD's AMI for the City at the time of sale, and a calculation of the aggregate income of all buyers of properties acquired under this agreement.
3. Elevation must monitor and enforce compliance by each such buyer of their obligations under the related Land Lease executed by such buyer for such residential unit.