

WHEN RECORDED MAIL TO:

Attention: Theresa Mendoza
201 W. Colfax Ave., Dept. 204
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

SECOND AMENDMENT AND MODIFICATION AGREEMENT

THIS SECOND AMENDMENT AND MODIFICATION AGREEMENT (“Second Amendment”) is made and entered into by and among the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), **COLORADO HEALTH & SCIENCE ECOSYSTEM LLC**, a Colorado limited liability company, whose address is 3001 Brighton Boulevard, Suite 449, Denver, Colorado 80216 (“Borrower”), **HENRY JASON WINKLER**, an individual, whose address is 900 South Jackson Street, Denver, Colorado 80209-5014, and **ELLEN P. WINKLER**, an individual, whose address is 900 South Jackson Street, Denver, Colorado 80209-5014, (together, the “Guarantors”) (collectively, the “Parties”).

WITNESSETH:

WHEREAS, the Parties entered into that certain Loan Agreement dated September 19, 2014, as amended by the First Amendment and Modification Agreement dated May 13, 2016, and recorded on May 20, 2016 at Reception No. 2016065712 of the records of City and County of Denver, State of Colorado relating to a loan of \$1,000,000 to a selected business entity within a designated target area (the “Loan Agreement”); and

WHEREAS, Borrower executed that certain deed of trust (the “Lafayette Deed of Trust”) for the benefit of the City, dated September 30, 2014, and recorded on October 6, 2014 at Reception No. 2014121391 of the records of the City and County of Denver, State of Colorado, and encumbering the following described property:

PARCELS C AND H AND THAT PART OF PARCELS B AND I, LYING SOUTHWESTERLY OF A LINE 50 FEET SOUTHWESTERLY OF, MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE NORTHEASTERLY LINES OF SAID PARCELS B AND I, AND THAT PART OF PARCEL G LYING SOUTHEASTERLY OF A LINE 80.75 FEET SOUTHEASTERLY OF, MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE NORTHWESTERLY LINE OF SAID PARCEL G, BLAKE RESUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO

also known and numbered as 3825 Lafayette Street, Denver, Colorado; and

WHEREAS, the Lafayette Deed of Trust secures the repayment of the indebtedness evidenced by that certain Promissory Note dated September 30, 2014 (the “Note”); and

WHEREAS, the Parties wish to modify the terms and conditions of the Loan Agreement, Note, and Lafayette Deed of Trust, and any other documents evidencing or securing the City's loan (together, the "Loan Documents"), to modify the security for repayment, and to modify certain terms contained in the Loan Documents;

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. The City previously agreed to release the Lafayette Deed of Trust so long as the Borrower caused to be granted to the City a new deed of trust encumbering property known as 621-639 Kalamath Street, Denver, Colorado. The Borrower has not caused such a replacement deed of trust to be granted or recorded. The City agrees to release the Lafayette Deed of Trust so long as the Borrower causes a new deed of trust, in a form satisfactory to the City and in the amount of \$1,000,000 (the "Replacement Deed of Trust"), to be executed and recorded which encumbers the property also known and numbered at 2950 Arkins Court, Denver, Colorado and described on **Exhibit A** hereto. Encumbrances prior to the Replacement Deed of Trust shall not exceed the greater of (a) the market value of the land and improvements less the prior encumbrances or (b) twice the amount of the loan (the "Maximum Prior Encumbrance Amount").

2. The Executive Director (the "Executive Director") of the City's Office of Economic Development ("OED"), or permitted designee, is hereby authorized to execute documents necessary to release the Lafayette Deed of Trust, and to execute documents necessary to accomplish the amendments set forth herein so long as (a) such documents are in form satisfactory to the City Attorney; (b) encumbrances prior to the Replacement Deed of Trust do not exceed the Maximum Prior Encumbrance Amount; and (c) Borrower is not then in default of its obligations under the Loan Agreement or pursuant to the Note, Guaranty Agreement, or Replacement Deed of Trust.

3. The Executive Director of the OED, or permitted designee, is hereby authorized to execute documents necessary to release the Replacement Deed of Trust, upon recordation of a new replacement deed of trust, in a form satisfactory to the City and in the amount of \$1,000,000 on any of the properties listed on **Exhibit B** hereto (the "Alternative Properties") so long as (a)

such documents are in form satisfactory to the City Attorney; (b) encumbrances prior to any such Replacement Deed of Trust do not exceed the Maximum Prior Encumbrance Amount; (c) Borrower is not then in default of its obligations under the Loan Agreement or pursuant to the Note, Guaranty Agreement, or Replacement Deed of Trust; and (d) the Executive Director concludes, in his or her sole discretion, that the City's interests remain adequately protected.

4. The Executive Director of OED, or permitted designee, is authorized to execute documents necessary to subordinate the lien of the Replacement Deed of Trust so long as (a) the subordination agreement is in the form attached hereto as **Exhibit C**; (b) encumbrances senior to the Replacement Deed of Trust do not in the aggregate exceed the Maximum Prior Encumbrance Amount; and (c) Borrower is not then in default of its obligations pursuant to the Loan Agreement or pursuant to the Note, Guaranty Agreement, or Replacement Deed of Trust.

5. The Loan Documents are amended to reflect the amended terms contained herein, including but not limited to replacing all references to the Lafayette Deed of Trust with the Replacement Deed of Trust.

6. Borrower and Guarantors each consent 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 this 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 this 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. This Second Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

7. 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 _____

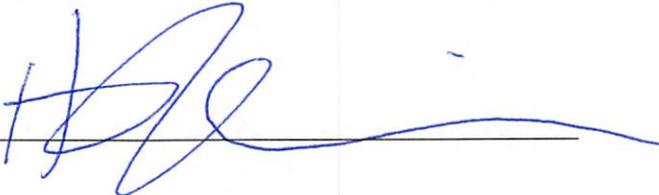
By _____

By _____



Contract Control Number: OEDEV-201417263-02

Contractor Name: COLORADO HEALTH & SCIENCE ECOSYSTEM
LLC

By: 

Name: It Jasan Winkler
(please print)

Title: Mgr
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



**COLORADO HEALTH & SCIENCE
ECOSYSTEM LLC**, a Colorado limited
liability company

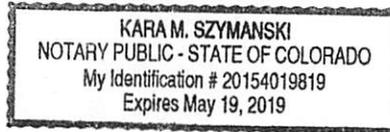
IRS No. 47-1019109

By: _____

Title: H Jason Winkler

“BORROWER”

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



Acknowledged before me this 16th day of MARCH, 2017, by HENRY JASON WINKLER as MANAGER of Colorado Health & Science Ecosystem LLC, a Colorado limited liability company.

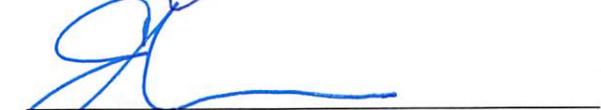
Witness my hand and official seal.

My commission expires: 05/19/19

K
Notary Public

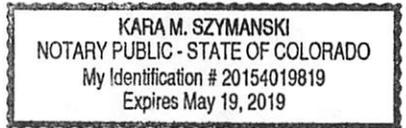



HENRY JASON WINKLER


ELLEN P. WINKLER

“REMAINING GUARANTORS”

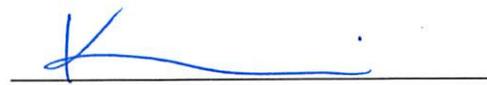
STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)



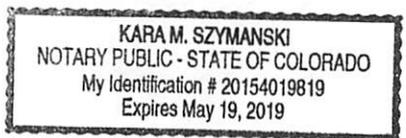
Acknowledged before me this 6th day of MARCH, 2017, by **HENRY JASON WINKLER.**

Witness my hand and official seal.

My commission expires: 5/19/19


Notary Public

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



Acknowledged before me this 7th day of MARCH, 2017, by **ELLEN P. WINKLER.**

Witness my hand and official seal.

My commission expires: 5/19/19


Notary Public

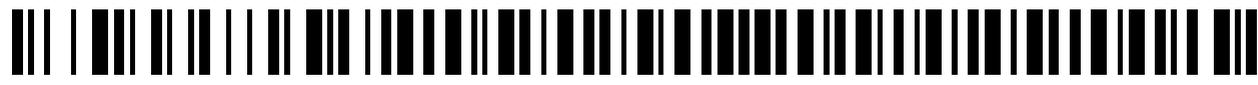


EXHIBIT A
DESCRIPTION OF THE REPLACEMENT DEED OF TRUST PROPERTY

A tract of land situated in the north $\frac{1}{2}$ of Section 27, Township 3 South, Range 68 West of the 6th Principal Meridian, City and County of Denver, State of Colorado, described as follows:

Beginning at the point of intersection of the centerline of 29th Street, with the northwesterly line of Brighton Boulevard;

Thence northwesterly along the centerline of said 29th Street, which is a straight line forming an angle of 91 degrees 17 minutes from the northeast to northwest with said northwesterly line of Brighton Boulevard, a distance of 320.44 feet;

thence northeasterly along a straight line at right angles to said centerline of said 29th Street a distance of 186.32 feet to the true point of beginning of the land hereby being described;

thence northwesterly along a straight line parallel with and 186.32 feet distant northeasterly, measured at right angles, from said centerline of 29th Street, a distance of 288.16 feet, more or less, to a point in the southeasterly line of Arkins Court;

thence northeasterly along the southeasterly line of said Arkins Court, a distance of 490.02 feet, more or less, to a point that is 476.63 feet distant southwesterly, measured at right angles, from the southwesterly line of 31st Street, thence southeasterly along a straight line parallel with said southwesterly line of 31st Street a distance of 65.72 feet more or less, to a point in a straight line drawn at right angles to said centerline of 29th Street and through the true point of beginning;

thence southwesterly along said straight line drawn at right angles, to the centerline of 29th Street a distance of 435.14 feet more or less to the true point of beginning.

Purported address (for information only): 2950 Arkins Court, Denver, Colorado.

EXHIBIT B

LIST OF ALTERNATIVE PROPERTIES

- i. 2950 Arkins Court, Denver, Colorado
- ii. 970 Yuma Street, Denver, Colorado
- iii. 621 Klamath Street, Denver, Colorado
- iv. 900 South Jackson Street, Denver, Colorado

EXHIBIT C
FORM OF SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") dated [INSERT DATE], is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, the present holder of a certain deed of trust, whose address is Office of Economic Development, 201 W. Colfax Ave., Dept. 204, Denver, Colorado 80202 (the "Junior Lender") and [INSERT LENDER NAME], a [INSERT STATE][INSERT ENTITY TYPE], whose address is [INSERT LENDER'S ADDRESS] (the "Senior Lender").

PRELIMINARY STATEMENTS

A. The Junior Lender has made a loan to COLORADO HEALTH & SCIENCE ECOSYSTEM LLC, a Colorado limited liability company (the "Borrower") in the principal amount of \$1,000,000, evidenced by that certain Promissory Note, dated as of September 30, 2014, made by the Borrower and payable to the Junior Lender and secured by that certain Deed of Trust [the "Junior Deed of Trust"] made as of [INSERT DATE OF DEED OF TRUST] and recorded on [INSERT RECORDATION DATE] at Reception No. [INSERT RECEPTION NUMBER] of the real property records in the office of the Clerk and Recorder of City and County of Denver, State of Colorado, encumbering the following described property (the "Property"):

[FILL IN LEGAL DESCRIPTION OR SEE LEGAL DESCRIPTION – ATTACHMENT A]

B. The Senior Lender plans to grant Borrower a loan of \$[INSERT NUMERIC AMOUNT], and will execute a deed of trust ("Senior Deed of Trust") which will cover and encumber all or part of the Property and securing a note in like amount, and the Senior Deed of Trust is to be recorded in the records of the office of the Clerk and Recorder of [INSERT COUNTY] County, State of Colorado.

C. It is the desire of the parties and to the mutual benefit of all parties that the lien of the Junior Deed of Trust be subordinated to the lien of the Senior Deed of Trust.

AGREEMENT

For and in consideration of the mutual benefits accruing to the parties hereto, and the promises set forth, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Junior Deed of Trust. As used herein, the following terms shall have the meanings assigned to them:

"Senior Obligations" means each and every debt, liability and obligation of every type and description that the Borrower may now or at any time hereafter owe to the Senior Lender in connection with the Senior Deed of Trust, whether such debt, liability or

obligation now exists or is hereafter assumed, created or incurred and whether it is or may be direct or indirect, due or to become due, or absolute or contingent.

"Junior Obligations" means any deed of trust or other mortgage, lien or encumbrance made by the Borrower to and for the benefit of the Junior Lender, including, without limitation, the Junior Deed of Trust and any and all security interests, liens or other encumbrances granted in connection with the loan by the Borrower and in favor of the Junior Lender.

2. Subordination. All Junior Obligations are hereby expressly subordinated to the extent and in the manner hereinafter set forth to the payment in full of the Senior Obligations. The Junior Lender hereby agrees that (regardless of any priority otherwise available to the Junior Lender by law or by agreement) any security interest that the Junior Lender might now hold in the Mortgaged Property, is fully subordinate to any security interest that the Senior Lender may now or hereafter hold in the Mortgaged Property.

3. Collateral and Security Interest. Until all of the Senior Obligations have been paid in full, the Junior Lender shall not demand, receive or accept (i) a pledge of any of the Mortgaged Property as security for the Junior Obligations, or (ii) a grant of any security interest or any other right or interest in any of the Mortgaged Property.

4. Payments Before Default Under Senior Loan Documents. Until the Junior Lender receives notice from the Senior Lender that a default has occurred in connection with the Senior Loan Documents as set forth in Section 8 herein, the Junior Lender shall be entitled to retain for its own account all payments made in connection with the Junior Obligations.

5. Waiver and Consent. The Senior Lender shall have no obligation to the Junior Lender with respect to the Mortgaged Property or the Senior Obligations. The Senior Lender may in accordance with the Senior Deed of Trust (a) exercise collection rights, (b) take possession of, sell or dispose of, and otherwise deal with, the Mortgaged Property, (c) in the Senior Lender's name, the Junior Lender's name or in the Borrower's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, the Mortgaged Property; (d) prosecute, settle and receive proceeds on any insurance claims relating to the Mortgaged Property, and (e) exercise and enforce any right or remedy available to the Senior Lender with respect to the Mortgaged Property, whether available before or after the occurrence of any default; all without notice to or consent by anyone except as specifically required by law. The Senior Lender may apply the proceeds of the Mortgaged Property in any order the Senior Lender deems appropriate in its sole discretion, except as required by law.

6. No Action. Except to the extent that Junior Lender obtains Senior Lender's permission pursuant to the following sentence, the Junior Lender will not commence any action or proceeding with respect to the Mortgaged Property or against the Borrower, will not take possession of, sell or dispose of, or otherwise deal with, the Mortgaged Property, and will not exercise or enforce any other right or remedy that may be available to the Junior Lender against the Borrower or with respect to the Mortgaged Property upon Borrower's default with respect to the Junior Obligations, without the Senior Lender's prior written consent, which shall not be unreasonably withheld or delayed. In addition, and without limiting the generality of the

foregoing, if the Borrower is in default under the Senior Deed of Trust, any credit agreement or other agreement in favor of the Senior Lender (the "Senior Loan Documents") and the Senior Lender or Borrower intends to sell any part of the Mortgaged Property to an unrelated third party, the Junior Lender shall, upon the Senior Lender's request, promptly execute and deliver to such purchaser such instruments as may reasonably be necessary to terminate and release any security interest or lien the Junior Lender might have in the Mortgaged Property to be sold.

7. Notice of Default to Senior Lender. Any notice provided to Borrower by the Junior Lender of any default under the Junior Deed of Trust shall also be sent to Senior Lender.

8. Notice of Default to Junior Lender. Senior Lender shall deliver to the Junior Lender a default notice within ten business days in each case where Senior Lender has given a default notice to the Borrower. The Junior Lender shall have the right, but not the obligation, to cure any default under the Senior Loan Documents within the same time, and the same manner, as the Borrower pursuant to the Senior Loan Documents. All amounts paid by the Junior Lender to Senior Lender to cure a default under the Senior Loan Documents shall be deemed to have been advanced by the Junior Lender pursuant to, and shall be secured by the lien of, the Junior Deed of Trust.

9. No Representations or Warranties. Neither the Junior Lender nor the Senior Lender (i) makes any representation or warranty concerning the Mortgaged Property or the validity, perfection or (except as to the subordination effected hereby) priority of any security interest therein, or (ii) shall have any duty to preserve, protect, care for, insure, take possession of, collect, dispose of or otherwise realize upon any of the Mortgaged Property.

10. Binding Effect; Miscellaneous. This Agreement shall be binding upon the Junior Lender and its respective successors and assigns and shall inure to the benefit of the Senior Lender and its participants, successors and assigns, but neither the Borrower nor any other secured party shall be entitled to rely on or enforce this Agreement. This Agreement cannot be waived or changed or ended, except by a writing signed by the party to be bound thereby. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Colorado. Each party consents to the personal jurisdiction of the state and federal courts located in the State of Colorado in connection with any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any litigation initiated by either of them in connection with this Agreement shall be venued in the City and County of Denver. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The Junior Lender waives notice of the Senior Lender's acceptance hereof.

11. Notice. Any notice required under this Agreement shall be deemed to have been given when mailed by certified mail, return receipt requested, or by overnight express mail or courier service, to the addresses of the Junior Lender or the Senior Lender, as the case may be, set out in the first paragraph of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

“JUNIOR LENDER”

CITY AND COUNTY OF DENVER, a Colorado Municipal Corporation

By: _____

Title: _____, Office of Economic Development

State of Colorado)
) ss.
County of)

The foregoing instrument was subscribed to and acknowledged before me this ____ day of ____, 20 ____, by _____ as _____ of Office of Economic Development for the City and County of Denver, a municipal corporation of the State of Colorado, for and on behalf of the City.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

“SENIOR LENDER”

[INSERT SENIOR LENDER NAME], a [INSERT STATE][INSERT ENTITY TYPE]

By: _____

Title: _____

\

State of Colorado)
) ss.
County of)

The foregoing instrument was subscribed to and acknowledged before me this ____ day
of _____, 20____, by _____ as _____ of

Witness my hand and official seal.
My commission expires: _____.

Notary Public

Acknowledged by BORROWER:

COLORADO HEALTH & SCIENCE ECOSYSTEM LLC,
a Colorado limited liability company

By: _____

Title: _____

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]