

Upon Recording, return to:

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07-383-A

**FIRST AMENDMENT AND MODIFICATION AGREEMENT TO LOAN  
AGREEMENT, PROMISSORY NOTE, DEED OF TRUST, AND RENTAL AND  
OCCUPANCY COVENANT**

**THIS FIRST AMENDMENT AND MODIFICATION AGREEMENT TO LOAN  
AGREEMENT, PROMISSORY NOTE, DEED OF TRUST, AND RENTAL AND  
OCCUPANCY COVENANT** is made as of August \_\_, 2011 by and between the **CITY AND  
COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and  
**LINCOLN HOUSING PARTNERS, LLLP**, a Colorado limited liability limited partnership,  
whose address is 2330 Broadway, Suite 103, Denver, Colorado 80205 ("Borrower" or  
"Contractor"), together hereinafter referred to collectively as the "Parties".

**WITNESSETH:**

**WHEREAS**, the Parties entered into a Loan Agreement dated May 22, 2007, relating to  
a loan of Seven Hundred Fifty Thousand Dollars (\$750,000.00) of HOME funds for rental  
housing assistance (the "Loan Agreement"); and

**WHEREAS**, the City is the beneficiary of that certain Deed of Trust dated June 13,  
2007, and recorded on August 30, 2007 under Reception No. 2007135063 of the records of the  
City and County of Denver, State of Colorado (the "Deed of Trust") encumbering certain real  
property known as the real property located at 501 Lincoln Street ("Property"), which a partial  
release of such Deed of Trust was accomplished by a Partial Release of Deed of Trust and  
Release dated December 5, 2008 and recorded on December 15, 2008 under Reception No.  
2008167825;

**WHEREAS**, the Deed of Trust secures the repayment of the indebtedness evidenced by  
Borrower's promissory note dated June 13, 2007 (the "Note"); and

**WHEREAS**, pursuant to the terms of the Loan Agreement, Borrower executed a Rental and Occupancy Covenant dated June 13, 2007 and recorded August 30, 2007 under Reception No. 2007135062 of the records of the City and County of Denver (“Affordability Covenant”) encumbering the Property by placing certain affordability restrictions upon the Property; and

**WHEREAS**, the parties again wish to modify the terms and conditions of the Loan Agreement, Note and Deed of Trust, Affordability Covenant and any other documents evidencing or securing Borrower’s loan (collectively, the “Loan Documents”), to modify the repayment provisions of Borrower’s loan; and

**WHEREAS**, based upon the refinancing of the Property by Borrower through a loan insured by the Secretary of Housing and Urban Development (“HUD”), the parties wish to amend the Loan Documents to reflect the HUD program requirements for subordination of the Loan Documents to the new HUD-insured loan;

**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 some or all of the Loan Documents as follows:

1. Section 1 of the Loan Agreement, “LOAN TO BORROWER,” is deleted and replaced with the following:

“1. LOAN TO BORROWER: Subject to the terms of this Agreement, the City agrees to lend Borrower the sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00), to be due and payable finally on December 31, 2051. Interest shall begin accruing at a rate of one percent (1%) on the date of the Note. Principal and interest shall be due on the first day of July, 2013 and each first day of July thereafter, but will be payable only to the extent Borrower has “Surplus Cash.” Surplus Cash shall have the same definition as that set forth in the HUD regulatory agreement applicable to the Property by and between the Borrower and HUD.”

2. Section 26 of the Loan Agreement, “PASS-THROUGH OF CITY OBLIGATIONS PURSUANT TO THE APPLICANT VERIFICATION

STATUTE,” is amended by the addition of Paragraph C and reads as follows:

“C. To the extent that any terms of this paragraph 26 conflict with any provisions of federal law, the provisions of federal law shall prevail.”

3. The Loan Agreement is amended by the addition of Paragraph 27, entitled, **“ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.”** and reads as follows:

“27. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Borrower consents to the use of electronic signatures by the City. The Agreement, 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 Agreement 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 Agreement 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.”

4. The attached Secondary Financing Rider shall be added to the Loan Agreement, Note and Deed of Trust, and shall be incorporated by reference therein.
5. The attached Land Use Rider shall be added to the Affordability Covenant, and shall be incorporated by reference therein.
6. Except as amended and modified herein, the Loan Documents remain unmodified and are hereby ratified and reaffirmed.

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

**[SIGNATURES ON FOLLOWING PAGES]**

**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment and Modification Agreement to Loan Agreement, Promissory Note, Deed of Trust and Rental and Occupancy Covenant as of the day and year first written above.

**ATTEST:**

**CITY AND COUNTY OF DENVER**

\_\_\_\_\_  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

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

**APPROVED AS TO FORM:**  
City Attorney  
for the City and County of Denver

**RECOMMENDED AND APPROVED:**

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

By: \_\_\_\_\_  
**COUNTERSIGNED:**  
Assistant City Attorney

**REGISTERED** **AND**

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. GE7A011-01

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

**“CITY”**

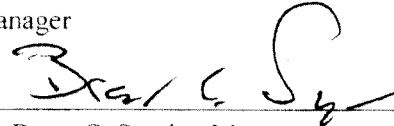
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment and Modification Agreement to Loan Agreement, Promissory Note, Deed of Trust and Rental and Occupancy Covenant as of the day and year first written above.

**BORROWER:**

**Lincoln Housing Partners, LLLP.**  
a Colorado limited liability limited partnership

By: **Lincoln Housing Associates, LLC.**  
a Colorado limited liability company,  
Its General Partner

By: **Century LHA, LLC.**  
a Colorado limited liability company,  
Its Manager

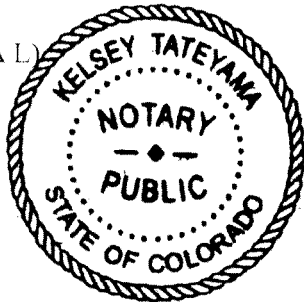
By:   
Brent C. Snyder, Manager

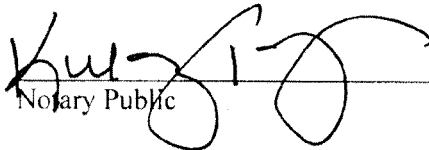
STATE OF COLORADO )  
COUNTY OF Denver ) ss.

The foregoing instrument was acknowledged before me this 10 day, August, 2011, by Brent C. Snyder, Manager of the member of Lincoln Housing Associates, LLC, the sole general partner of Lincoln Housing Partners, LLLP.

My commission expires: May 21, 2015

(SEAL)



  
Notary Public

By: PacificCap Holdings XXXVII, LLC,  
a Colorado limited liability company,  
Its Manager

By: [Signature]  
Chad I. Rennaker, Manager

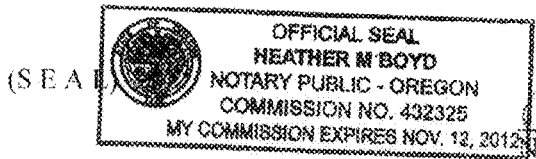
STATE OF OREGON

COUNTY OF MULTNOMAH

) ss.  
)

On this 8<sup>th</sup> day of August, 2011, before me personally appeared Chad I. Rennaker, to me personally known to be a Manager of the member of Lincoln Housing Associates, LLC, the sole general partner of Lincoln Housing Partners, LLLP, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

Given under my hand seal of office this 8<sup>th</sup> day of August, 2011.



[Signature]  
Notary Public in and for the said  
County and State

My Commission Expires:  
11/12/12

Printed Name of Notary:  
Heather M Boyd

## Secondary Financing Rider

THIS SECONDARY FINANCING RIDER ( the "Rider") is attached to and made a part of the Loan Agreement (herein the "Junior Loan Agreement"), Promissory Note (herein, the "Junior Note") and Deed of Trust (herein, the "Junior Mortgage") between the Lincoln Housing Partners LLLP, a Colorado limited liability limited partnership, referred to herein as the "Mortgagor," and the City and County of Denver, a home rule municipal corporation of the State of Colorado, referred to herein as the "Junior Mortgagee" (collectively, the "Junior Loan Documents") in connection with the loan provided to Mortgagor by Junior Mortgagee (herein "the Junior Loan").

The terms and conditions of the Rider supersede the terms of the Junior Loan Documents, and, should there be any conflict or inconsistency between this Rider and the Junior Loan Documents, the terms and conditions of this Rider shall prevail.

By acceptance of delivery and recordation of the Junior Loan Documents, the Junior Mortgagee agrees to the following provisions.

By execution of the Junior Loan Documents, the Mortgagor agrees to the following provisions:

1. The Junior Loan Documents are specifically subordinate to that certain note and deed of trust between the Mortgagor and Dougherty Mortgage LLC (herein, the "Senior Mortgage") dated as of \_\_\_\_\_, 2011 and recorded in the records of the City and County of Denver on \_\_\_\_\_, 2011 (the "Senior Mortgage").
2. The Junior Note may not mature, and may not bear a maturity date, prior to the date on which the Senior Mortgage matures. The term of the Junior Mortgage may be extended by the Junior Mortgagee, if the Junior Note matures, there are no surplus cash funds available for repayment and the Senior Mortgage has not been retired in full or HUD grants a deferment of amortization or forbearance that results in an extended maturity of the Senior Mortgage.
3. The Junior Mortgage may be assumed when a sale or transfer of the physical assets occurs under the following conditions:
  - a. Not more than 70 percent of the net proceeds of the sale or transfer is applied to the reduction of the loan.
  - b. For these instructions, net proceeds are the funds available to the original mortgagor after:
    - i. Correcting any monetary or covenant default on the first mortgage, and
    - ii. Making required contributions to any reserve funds and needed improvements to the property as evidenced by HUD's annual inspection reports.

4. If HUD approves a sale of the project pursuant to HUD guidelines for transfers of physical assets ("TPA"), then Junior Mortgagee will agree to such transfer of the ownership of the project.
5. The Junior Loan Documents automatically terminate if HUD acquires title to the project by foreclosure or deed in lieu of foreclosure.
6. All construction work performed with the proceeds of the Junior Mortgage, must be cost certified and must conform with Davis-Bacon requirements.
7. The Junior Mortgage is subject to and subordinate to the Senior Mortgage, the HUD Regulatory Agreement between HUD and the Mortgagor.
8. Proceeds of the Junior Loan may only be used to cover allowable project costs or an anticipated operating shortfall.
9. As long as the Secretary of Housing and Urban Development, or his/her successors or assigns, is the insurer or holder of the Senior Mortgage, any payments due from project income under the Junior Loan Documents, or any prepayments made, shall be payable only from surplus cash of the project, as that term is defined in the Regulatory Agreement dated September 1, 2011 between the Secretary and the Mortgagor, and subject to the availability of such surplus cash in accordance with the provision of said Regulatory Agreement. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by the Junior Note.
10. Mortgagor has obtained the prior written consent of the Senior Mortgagee to the existence of the Junior Loan.
11. To the extent that the Junior Note provides for payment of principal and interest, such principal and interest shall be due and payable on the maturity date of the Senior Mortgage, provided that if the Senior Mortgage is prepaid in full, the holder of the Junior Note, at its option and without notice, may declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable. Interest due pursuant to the terms of the Junior Note that is not paid in accordance therewith shall not create any default in the terms of the Junior Note, but shall accrue and be payable in full at the date of maturity of the Senior Mortgage.
12. The Junior Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Junior Mortgagee except with the prior written approval of HUD.
13. Only 50 percent of surplus cash or residual receipts can be pledged to the repayment of the secondary loan(s). However, at the owner's option additional payments may be made from time to time.
14. The Junior Mortgagee certifies that the Junior Loan Documents represent a *bona fide* transaction and that it fully understands all of HUD's requirements for such secondary financing,



and that no prepayment of principal or interest shall be accepted without evidence that the Federal Housing Commissioner has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be held by the Junior Mortgagee in trust for the project.

15. The following documents cannot be amended without HUD's prior written approval: (a) this Rider; (b) the First Amendment and Modification Agreement to Loan Agreement, Promissory Note, Deed of Trust, and Rental and Occupancy Covenant; and, (c) the Loan Documents, as defined in the First Amendment and Modification Agreement to Loan Agreement, Promissory Note, Deed of Trust, and Rental and Occupancy Covenant to which this Rider is attached.

16. In the event that any terms of either this Rider or the Loan Documents, as defined in the First Amendment and Modification Agreement to Loan Agreement, Promissory Note, Deed of Trust, and Rental and Occupancy Covenant, to which this Rider is attached, conflict with any provisions of federal law, the provisions of federal law shall prevail.

## **Land Use Rider**

This Land Use Rider (the "Rider") is attached to and forms a part of the Rental and Occupancy Covenant (the "Affordability Covenant") dated as of June 13, 2007 and recorded August 30, 2007 under Reception No. 2007135062 of the records of the City and County of Denver executed by LINCOLN HOUSING PARTNERS, LLLP, a Colorado limited liability limited partnership (the "Owner").

1. The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of the Affordability Covenant.

2. Notwithstanding anything in this document to the contrary, the provisions hereof are expressly subordinate to the HUD insured deed of trust, to the HUD Regulatory Agreement, and subordinate to all applicable HUD mortgage insurance (and Section 8, if applicable) regulations and related administrative requirements. In the event of any conflict between the provisions of this document and the provision of an applicable HUD regulations, related HUD administrative requirements, or HUD/FHA loan documents, the HUD regulations, related administrative requirements or loan documents shall control.

3. In the event of foreclosure or transfer of title by deed in lieu of foreclosure, any and all land use covenants contained herein shall automatically terminate.

4. Failure to comply with the covenants contained herein will not serve as a basis for default on the HUD insured mortgage.

5. Enforcement of the covenants herein will not result in any claim against the project, the mortgage proceeds, any reserve or deposit required by HUD in connection with the mortgage transaction, or the rents or other income from the property other than:

1. Available surplus cash, if the mortgagor is profit-motivated;
2. Available distributions and residual receipts authorized for release by HUD, if the mortgagor is limited distribution; or
3. Available residual receipts authorized by HUD, if the mortgagor is non-profit.

6. Any subsequent amendment to this document is subject to prior HUD approval.

7. In the event that any terms of either this Rider or the Loan Documents, as defined in the First Amendment and Modification Agreement to Loan Agreement, Promissory Note, Deed of Trust, and Rental and Occupancy Covenant to which this Rider is attached, conflict with any provisions of federal law, the provisions of federal law shall prevail.

8. This Rider cannot be amended without HUD's prior written approval.