

## **SECOND AMENDMENT TO LOAN AGREEMENT**

**THIS SECOND AMENDMENT TO LOAN 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 **ATLANTIS COMMUNITY FOUNDATION**, a Colorado nonprofit corporation whose address is 201 South Cherokee Street, Unit 120, Denver, Colorado 80223 (“Borrower”), each individually a “Party” and collectively the “Parties.”

### **RECITALS:**

**WHEREAS**, the Parties entered into that certain Loan Agreement dated February 7, 2002 and an Amending Agreement dated May 25, 2022 (the “Loan Agreement”) relating to a loan to Borrower in the original principal amount of \$722,746.00 (the “Loan”); and

**WHEREAS**, the Loan consisted of federal funds in the amount of \$230,000.00 (the “HOME Program Funds”) that the City had received pursuant to the Home Investment Partnership Program (the “HOME Program”), federal funds in the amount of \$150,000.00 (the “HOPWA Program Funds”) that the City had received pursuant to the Housing Opportunities for Persons with AIDS Program (the “HOPWA Program”), and local City funds in the amount of \$342,746.00; and

**WHEREAS**, the Borrower executed a promissory note dated March 12, 2002 evidencing the terms of the Loan (the “Note”); and

**WHEREAS**, the Borrower executed a Deed of Trust for the benefit of the City (the “Deed of Trust”), dated March 12, 2002 and recorded on March 13, 2002 in the real property records of the City and County of Denver at Reception No. 2002049983, encumbering the real estate located in the City and County of Denver, State of Colorado described therein (the “Property”); and

**WHEREAS**, as a condition of the receipt of the Loan, the Borrower executed a Rental and Occupancy Covenant (the “Covenant”), dated March 12, 2002 and recorded on March 13, 2002 in the real property records of the City and County of Denver at Reception Number 2002049982, encumbering the Property; and

**WHEREAS**, the Covenant encumbered the Property with certain rental and occupancy limitations as set forth in the Loan Agreement and associated with the HOME Program and HOPWA Program; and

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

**WHEREAS**, the Parties acknowledge that (i) the twenty-three (23) City Units are offline, (ii) the building is vacant and will be demolished for future development, and (iii) the City Units will remain offline until completion of the redevelopment; and

**WHEREAS**, the Parties acknowledge that, while Borrower operated the Property in compliance with the requirements of the Loan Documents for twenty-three (23) of the total thirty (30) year term of Loan restrictions (“Term”), Borrower is currently in default due to the offline City Units;

**WHEREAS**, the Borrower desires to sell a vacant portion of the Property previously used as a parking lot (“Parking Lot Sale”) which parcel (“Parking Lot Parcel”) comprises twenty-five percent (25%) of the total Property;

**WHEREAS**, the Borrower desires to and use the sales proceeds from the Parking Lot Sale to repay twenty-five (25%) of the outstanding balance of the Loan (“Partial Repayment”), and use the remaining sales proceeds to fund the demolition for future development of the remainder of the Property;

**WHEREAS**, the City has approved the Parking Lot Sale and the release of this parcel from the City’s encumbrances upon receipt of the Partial Repayment;

**WHEREAS**, in acknowledgement of the Borrower’s default and noncompliance, the City will require (a) repayment of the then remaining Loan balance upon the sale of the Property for redevelopment; and (b) an extension of the restrictions as described herein;

**WHEREAS**, the Parties desire to amend the Loan Agreement to reflect the Parking Lot Sale and Partial Release, and clarify the Borrower’s repayment obligations and new Term; and

**WHEREAS**, the Parties wish to amend the Loan Agreement as set forth herein.

**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 “Division of Housing & Neighborhood Development Services” and “HNDS” in the Loan Documents shall be replaced to read “Department of Housing Stability” and “HOST,” respectively.

2. Section 1 of the Loan Agreement entitled “**LOAN TO BORROWER**” is hereby deleted in its entirety and replaced with:

“**1. LOAN TO BORROWER:** Subject to the terms of this Agreement, the City agrees to lend Borrower the sum of Seven Hundred Twenty-Two Thousand Seven Hundred Forty-Six Dollars (\$722,746.00). Due to default, Borrower shall repay the entire loan back with interest as follows:

**A. Home Program Funds.** As to Two Hundred Thirty Thousand Dollars (\$230,000.00) of the total loan amount, Borrower drew \$229,900.09, rescinding the remaining Ninety-Nine Dollars and Ninety-One Cents (\$99.91). Borrower shall repay (i) Seventy-Seven Thousand Nine Hundred Thirty-One Dollars and Thirty-Four Cents

(\$77,931.34) of said portion to the City upon the Parking Lot Sale; and (ii) of the remaining balance with interest to the City on the date the remaining Property is sold for redevelopment.

**B. City Funds.** As to Three Hundred Forty-Two Thousand Seven Hundred Forty-Six Dollars (\$342,746.00) of the total loan amount, Borrower shall repay (i) Eighty-Five Thousand Six Hundred Eighty-Six Dollars and Fifty Cents (\$85,686.50) of said portion to the City upon the Parking Lot Sale; and (ii) the remaining Two Hundred Fifty-Seven Thousand Fifty-Nine Dollars and Fifty Cents (\$257,059.50) of said portion to the City on the date the remaining Property is sold for redevelopment.

**C. HOPWA Program Funds.** As to One Hundred Fifty Thousand Dollars (\$150,000.00) of the total loan amount (the “HOPWA Program Funds”), Borrower shall pay: (i) Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) of said portion to the City upon the Parking Lot Sale and (ii) the remaining One Hundred Twelve Thousand Five Hundred Dollars and No Cents (\$ 112,500.00) of said portion to the City on the date the remaining Property is sold for redevelopment.”

3. Subsection 4.C. of the Loan Agreement entitled “**Covenant Running with the Land**” is hereby deleted in its entirety and replaced with:

“**C. Covenant Running with the Land.** At closing, Borrower shall execute a covenant in form satisfactory to the City, setting forth the rental and occupancy limitations described in subparagraphs A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The covenant shall encumber the Property for a period not less than ninety (90) years from the date of its recording. Violation of said covenant shall be enforceable as an event of default pursuant to the paragraph below entitled “DEFAULT ACCELERATION.”

After ten (10) years have lapsed from the date the Covenant is recorded, Borrower will have satisfied the HOPWA program requirements and shall be released from and have no obligation to comply with the HOPWA program rules and regulations and the provisions of the Loan Agreement applicable to the HOPWA program. After fifteen (15) years have lapsed from the date the Covenant is recorded, Borrower will have satisfied the HOME Program requirements and shall be released from and have no obligation to comply with the HOME Program rules and regulations and the provisions of the Loan Agreement applicable to the HOME Program. Upon satisfying the HOPWA and HOME Program requirements, any right of HUD to enforce the terms of the Covenant shall

terminate. All other terms and obligations of the Loan Agreement shall remain in place for the balance of the term of the Covenant. After fifteen (15) years, the HOME Units and Low HOME Units shall be considered 'City Units.' The rent and occupancy/income limitations set forth herein shall remain in effect and applicable to the City Units for the balance of the Covenant term.

Notwithstanding the above paragraphs in this Section 4.C., the City Units are offline as of February 1, 2024 and will remain so until the Property is redeveloped, as documented by a Certificate of Occupancy (CO). The Borrower shall obtain approval from the Executive Director of HOST on a redevelopment plan no later than January 31, 2027. The Borrower shall redevelop the Property no later than January 31, 2029. The Covenant shall remain in place. However, the Parties acknowledge that the City will not enforce the Covenant until the City Units are back online or until January 31, 2029, whichever occurs sooner."

4. Borrower shall cause an amended covenant, in a form satisfactory to the City, to be executed memorializing the revision to the covenant term of ninety (90) years set forth in this Amendment. The City acknowledges that twenty-three (23) years of the covenant term have passed, for a net amount of sixty-seven (67) years remaining.

5. Upon receipt of the Borrower's Partial Repayment, the City shall cause the Partial Release of the Covenant and Deed of Trust from the Parking Lot Parcel.

6. Section 15 of the Loan Agreement entitled "**EXAMINATION OF RECORDS/ANNUAL MONITORING**" is hereby deleted in its entirety and replaced with:

**"15. AUDIT/EXAMINATION OF RECORDS/REPORTING REQUIREMENTS/ ANNUAL MONITORING; INSPECTIONS:**

A. Examination of Records and Audits: Any authorized agent of the City, including the City Auditor or his or her representative, the Comptroller of the United States, and HUD, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Borrower's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Borrower shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing

standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Borrower to make disclosures in violation of state or federal privacy laws. Borrower shall at all times comply with D.R.M.C. 20-276 must also require its contractors and subcontractors to allow access to such records when requested.

B. Records Related to Affordable Units. Borrower must retain all tenant file records for tenants who occupy or occupied an Affordable Unit, which shall include, but not be limited to: (a) move-in income verification, (b) annual recertifications, (c) leases (including lease renewals), (d) rental amounts for the Affordable Unit, and (e) utility allowance calculations. Borrower must also retain records of any inspection or inspections of an Affordable Unit or the Property. The records required to be retained by this subsection must be maintained for the duration of the tenant's occupancy in an Affordable Unit until seven (7) years after the tenant vacates an Affordable Unit. Upon the termination or expiration of the Covenant, records required to be retained by this subsection must be maintained for all tenants occupying an Affordable Unit at the time of Covenant expiration or termination until seven (7) years thereafter. File records can be maintained in electronic or hard-copy format so long as the records are accessible to HOST. In the event of a sale or conveyance of the Property, the resident file records must be maintained for seven (7) years after the date of sale or conveyance.

C. Required Information and Reports. Borrower shall submit to the City the following information and reports on HOST approved forms or online system: (1) annual compliance statement; (2) report on rents and occupancy of Affordable Units to verify compliance with affordability requirements in Section 6 and other requirements of this Agreement; (3) data on evictions, terminations of tenancies, or tenancies not renewed for individuals residing in Affordable Units; (4) reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; (5) for floating units, reports on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix; and (6) template lease agreements for Affordable Units. The report required by subsection (2) of this Section shall include, but not be limited to, information related to monthly rent amount, lease term, household size, total annual household income, and race and other demographic information. The reports and information required by

this Section shall be due within thirty (30) days of the City making a request for such reports and information. The failure to submit the reports and information requested by the City within thirty (30) days of the City's request shall be considered a default of this Agreement. Borrower shall maintain (i) records evidencing the income of each family occupying an Affordable Units, and (ii) a copy of the lease pursuant to which each Affordable Units is occupied.

D. Access and Inspections. For the purposes of assuring compliance with the Agreement, the City shall have the reasonable right of access to the Property, without charges or fees, (i) during the period of construction and (ii) during the period of affordability set forth in Section 6. During the period of affordability, the City shall be entitled to conduct annual physical inspections of the Property. Borrower shall fully cooperate with the City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Agreement."

7. Section 17 of the Loan Agreement entitled "**NO DISCRIMINATION IN EMPLOYMENT**" is deleted in its entirety and replaced with the following:

"17. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Loan Agreement, Borrower may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Borrower shall insert the foregoing provision in all subcontracts."

8. Section 26 entitled "**COMPLIANCE WITH DENVER WAGE LAWS**" is hereby inserted into the Loan Agreement and states:

"26. **COMPLIANCE WITH DENVER WAGE LAWS:** To the extent applicable to the Contractor's provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by

the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

9. The Executive Director of HOST or the Executive Director’s designee is authorized to execute documents necessary and appropriate to accomplish the objectives of this Amendment, so long as the documents are in a form acceptable to the City Attorney.

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

11. 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-202578268-02/HOST-GE1Y080-00  
ATLANTIS COMMUNITY FOUNDATION

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:**  
  
Attorney for the City and County of Denver  
  
By: \_\_\_\_\_

**REGISTERED AND COUNTERSIGNED:**  
  
By: \_\_\_\_\_  
  
By: \_\_\_\_\_



**Contract Control Number:**  
**Contractor Name:**

HOST-202578268-02/HOST-GE1Y080-00  
ATLANTIS COMMUNITY FOUNDATION

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

DocuSigned by:

*Lloyd Lewis*

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Name: Lloyd Lewis

(please print)

Title: ACF Board chair

(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_

(please print)

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

(please print)