

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

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

FIFTH AMENDMENT AND MODIFICATION AGREEMENT

THIS FIFTH AMENDMENT AND MODIFICATION AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and **2300 WELTON, LLC**, a Colorado limited liability company, whose address is 2330 Broadway, Suite 106, Denver, Colorado 80205 ("Borrower" or "Contractor") (together, the "Parties").

WITNESSETH:

WHEREAS, the City and Glenarm Residences, LLC ("Glenarm") entered into that certain Loan Agreement dated May 10, 2006, as amended by the First Amendment and Modification Agreement dated April 29, 2008, and recorded on June 6, 2008 at Reception No. 2008078083 of the records of Denver County, State of Colorado, a Second Amendment and Modification Agreement dated November 12, 2008 and recorded on December 10, 2008 at Reception No. 2008166174 of the records of Denver County, State of Colorado, a Third Amendment and Modification Agreement dated December 17, 2012 relating to a loan of \$920,000.00 (the "Loan") to a selected business entity within a designated target area, and the City and the Borrower entered into that Fourth Amendment and Modification Agreement dated December 9, 2014, increasing the amount and terms of the Loan, and recorded on December 24, 2014 at Reception No. 2014157120 (collectively the "Loan Agreement"); and

WHEREAS, Glenarm executed that certain deed of trust (the "Deed of Trust") for the benefit of the City, dated May 25, 2006, and recorded on June 2, 2006 at Reception No. 2006086064 of the records of Denver County, State of Colorado, and encumbering the following described property:

THE FRONT OR SOUTHEASTERLY 100 FEET OF LOTS 17 TO 20, AND THE NORTHWESTERLY 25 FEET OF THE NORTHEASTERLY 10 FEET OF LOT 20, BLOCK 181, CLEMENT'S ADDITION TO THE CITY OF DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO

also known and numbered as 515 Park Avenue West, f/k/a 501 Park Avenue and 2305 Glenarm Place, Colorado; and

WHEREAS, the Deed of Trust secures the repayment of the indebtedness evidenced by that certain Promissory Note dated May 25, 2006 (the “Glenarm Note”); and

WHEREAS, the Parties wish to have the Borrower execute a new Promissory Note, which contains the same terms as the Glenarm Note, except as provided herein, and will replace the Glenarm Note (the “Welton Note”); and

WHEREAS, the Parties wish to further modify the terms and conditions of the Loan Agreement and the documents evidencing or securing the City’s 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 the Loan Documents as follows:

1. The Welton Note. The terms of the Welton Note shall include such new terms as follows:

a. The Welton Note shall reflect a revised Loan amount of \$1,064,231.

b. The payment terms of the Welton Note shall be as follows:

i. Upon full execution of the Welton Note through full repayment of the loan, compound interest shall accrue at a rate of three percent (3%) per annum (365-day year).

ii. Upon full execution of the Welton Note and through December 31, 2016, interest shall accrue but payments of interest shall be deferred. Thereafter, principal, interest and deferred interest shall be payable from 90% of the 50% of Net Cash Flow as defined in the borrower’s Operating Agreement allocated to repay soft debts commencing on April 1, 2017 until such time as the full balance of the Welton Note, inclusive of all principal, interest, and fees, or any other such cost due under the Agreement have been fully satisfied.

iii. Any unpaid balances due under the Agreement shall become fully due and payable on July 1, 2057.

c. The Welton Note shall be personally guaranteed by Brent C. Snyder and Chad Rennaker, individuals (the “Guaranty”). Such guarantees shall be released upon

completion of construction evidenced by the issuance of permanent Certificates of Occupancy for the project.

- d. Repayment of the Welton Note shall be further secured by the Welton Deed of Trust (the "Welton Deed of Trust"). The Welton Deed of Trust shall include such terms as follows:

- i. Loan amount of \$1,064,231;
- ii. Inclusion of the repayment terms provided in subparagraph 1.b above; and
- iii. Inclusion of the properties commonly known as 2300 Welton Street and 515 Park Avenue West.

Borrower shall cooperate in the amendment of any documents to accomplish such Loan.

- e. Payment of any amount payable under the Welton Note is subordinated to payment of all "Senior Debt" as defined in, and in the manner and to the extent set forth in, that certain Subordination Agreement dated as of the ___ of January, 2015, by and between the City, the Secretary of the United States Department of Housing and Urban Development (the "Secretary"), and any other senior creditors party thereto, as amended, restated, supplemented or otherwise modified from time to time.

2. Paragraph 7 of the Agreement as amended is deleted in its entirety and replaced with the following:

- a. Affordability limitations. Two Hundred Twelve (212) of the units at the Property (the "Restricted Units") shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the U.S. Department of Housing and Urban Development ("HUD"), under 24 C.F.R. 888.11, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit. Eleven (11) of the units at the Property (the "Low Restricted Units") shall have rents not exceeding 30% of the annual income of a family whose income equals 30% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current rent guidelines from

the OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or HUD, and comply with same.

- b. Occupancy/Income Limitations. The Restricted Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as determined by HUD pursuant to section 24 C.F.R. 5.609 or any successor regulation. The Low Restricted Units shall be occupied by tenants whose incomes are at or below thirty percent (30%) of the median income for the Denver area as determined by HUD pursuant to section 24 CFR 5.609 or any successor regulation. By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current income guidelines from OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or HUD, and comply with same.
- c. Covenant Running with the Land. At closing, Borrower shall execute a covenant in form satisfactory to the City, which shall also include the HUD Rider to Restrictive Covenants (the "Welton Covenant"), and together with the Welton Note, Welton Deed of Trust, the Guaranty, this Agreement and any other documents evidencing or securing the City's Loan, the "New Loan Documents"). The Welton Covenant shall set 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 twenty (20) years from the date the project is placed in service. Violation of said Welton Covenant shall be enforceable as an event of default pursuant hereto.

3. Any amendments of the New Loan Documents required by the City shall be executed by the Borrower; provided however that no such amendment shall materially change the economic terms of the transactions described therein or expand the liabilities of the parties thereunder.

4. 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.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of January 6, 2015.

2300 WELTON, LLC,
a Colorado limited liability company

By: Century WHA, LLC,
a Colorado limited liability company
its Managing Member

By: Brent C. Snyder
Brent C. Snyder, Manager

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

The foregoing DEED OF TRUST was acknowledged before me this 6th day of January, 2015 by Brent C Snyder as Managing Member of Century WHA, LLC

Witness my hand and official seal.

My commission expires: 9/03/2017.

ROSE M BUSTAMANTE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094008689
MY COMMISSION EXPIRES 09/03/2017

Rose M Bustamante
Notary Public

Contract Control Number: OEDEV-CE63028-04

Contractor Name: 2300 Welton, 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:

D. Scott Martinez, Attorney for the
City and County of Denver

By _____

By _____

By _____

