

## **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 **YALE STATION APARTMENTS, LLC**, a Colorado limited liability company, whose address is 5291 E. Yale Ave, Denver, Colorado 80222 (“Borrower”), each individually a “Party” and collectively the “Parties.”

### **RECITALS:**

**WHEREAS**, the Parties entered into a loan agreement dated October 5, 2010 (the “Loan Agreement”), relating to a loan of federal funds pursuant to the Home Investment Partnership Program (“HOME Program”) by the City to the Borrower in the original principal amount of \$600,000.00 (the “Loan”); and

**WHEREAS**, the Borrower executed a promissory note dated November 1, 2010 evidencing the terms of the Loan (the “Promissory Note”); and

**WHEREAS**, the Borrower executed a Deed of Trust for the benefit of the City (the “Deed of Trust”), dated November 23, 2010 and recorded on November 24, 2010 in the real property records of the City and County of Denver at Reception No. 2010137300, encumbering the real property located in the City and County of Denver, State of Colorado described therein (the “Property”):

**WHEREAS**, as a condition of the receipt of the Loan, the Borrower executed a Rental and Occupancy Covenant (the “Covenant”), dated November 15, 2010 and recorded on November 24, 2010 in the real property records of the City and County of Denver at Reception Number 2010137301, 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

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

**WHEREAS**, since the execution of the Loan Agreement, the City has reorganized the responsibilities of its departments and has transferred the responsibility for overseeing housing

loans from the Office of Economic Development (“OED”) to the Department of Housing Stability (“HOST”);

**WHEREAS**, the Borrower is in the process of refinancing its senior debt with a loan product that is insured by the United States Department of Housing and Urban Development (“HUD”), which requires certain provisions of the Loan Agreement to be amended;

**WHEREAS**, the Parties wish to amend and modify the terms and conditions of the Loan Agreement as set forth herein.

**NOW THEREFORE**, in consideration of the promises 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 “Office of Economic Development” and “OED” in the Loan Documents are replaced to read “Department of Housing Stability” and “HOST,” respectively.

2. Section 3 entitled “**SUBORDINATION**” is deleted in its entirety and replaced with the following:

“The Director of the City’s Department of Housing Stability (“HOST”) or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City’s Covenant and Deed of Trust so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City’s Deed of Trust do not exceed \$5,000,000.00; and (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Deed of Trust.”

3. The Executive Director of HOST is authorized to execute a HUD Amendment to Restrictive Covenants (HOME Program) to subordinate the Covenant to financing that is insured by the United States Department of Housing and Urban Development (“HUD”) so long as the document is in a form acceptable to the City Attorney.

4. The Executive Director of HOST is authorized to execute documents necessary to carry out the intent of this Amendment so long as the documents are in a form approved by the City Attorney.

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

6. 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.

**Contract Control Number:** HOST-202263068-01, GE0A041-01  
**Contractor Name:** Yale Station Apartments 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-202263068-01, GE0A041-01  
Yale Station Apartments LLC

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

Name: THOMAS E. WHYTE  
(please print)

Title: VICE PRESIDENT  
(please print)

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ATTEST: [if required]

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

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

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