

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 **OPG GREEN VALLEY RANCH PARTNERS, LLC** a Colorado limited liability company, whose address is 254 N. Santa Fe Ave, Suite A, Salina, Kansas, 67401 (“Borrower” or “Contractor”). City and Borrower shall sometimes be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, the Parties entered into a loan agreement dated October 23, 2020 (the “Loan Agreement”) for the City to provide gap financing to the Borrower in the principal amount of \$3,000,000.00 (the “Loan”) for the development and construction of 144 affordable multi-family dwelling units (the “Project”); and

WHEREAS, as a result of changes in federal law, the amount of gap financing required by the Borrower to develop and construct the Project has decreased; and

WHEREAS, the Parties wish to amend and modify the terms and conditions of the Loan Agreement to reduce the amount of the Loan.

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. Section 1.A. of the Loan Agreement entitled **LOAN TO BORROWER** is replaced in its entirety by the following:

“Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of Two Million One Hundred Thousand Dollars and No/100 (\$2,100,000.00) (the “Loan”). In addition to this Loan Agreement, the Borrower will execute a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”) and a Covenant (as defined in Section 6) securing the Property for use as affordable housing as required by Section 6 hereof. Simple interest at a rate of one percent (1%) per annum shall commence accruing on the outstanding principal

balance of the Promissory Note on the date on which the first draw on the Loan is made.”

2. Section 3 of the Loan Agreement entitled **SUBORDINATION** is replaced in its entirety with the following:

“A. The Executive Director (the “Executive Director”) of the City’s Department of Housing Stability (“HOST”), or his or her designee, is authorized to execute documents necessary to subordinate the lien of the Deed of Trust and Covenant so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit E**; (ii) encumbrances prior to the Deed of Trust do not exceed \$30,000,000.00 under the construction loan or \$21,000,000.00 under the permanent loan; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Deed of Trust or the Covenant; and (iv) all additional financing for the Project is committed.

B. The Executive Director, or his or her designee, is authorized to execute documents necessary to subordinate the Deed of Trust and Covenant to land use restriction agreements, such as the Low-Income Housing Tax Credit Land Use Restriction Agreement required by the Colorado Housing and Finance Authority (“CHFA”), so long as (i) the subordination agreement is in the form acceptable to the City Attorney; (ii) encumbrances prior to the Deed of Trust do not exceed \$21,000,000.00 under the permanent loan; and (iii) Borrower is not in default of its obligations pursuant to this Loan Agreement, the Deed of Trust, or the Covenant.

C. The Executive Director, or his or her designee, is authorized to execute documents necessary to accomplish the Loan, as set forth herein, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the Deed of Trust do not exceed \$30,000,000.00 under the construction loan or \$21,000,000.00 under the permanent loan; and (iii) Borrower is not in default of its obligations pursuant to this Loan Agreement, the Deed of Trust, or the Covenant. ”

3. The first sentence of Subsection A. of Section 5. entitled **DEADLINE FOR DISBURSEMENT OF FUNDS; REQUIRED DOCUMENTATION** is replaced with the following:

“Borrower must provide Evidence of Financing (as defined below) and the final Operating Agreement on or before May 31, 2021.”

4. Exhibit A attached hereto shall replace and supersede Exhibit A attached to the Loan Agreement. All other exhibits attached to the Loan Agreement shall continue in full force and effect.

5. Except as herein amended, the Loan Agreement continues in effect, and is 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.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

Contract Control Number: HOST-202157596-01 / HOST-202055465-01
Contractor Name: OPG Green Valley Ranch Partners, 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: HOST-202157596-01 / HOST-202055465-01
Contractor Name: OPG Green Valley Ranch Partners, LLC

OPG GREEN VALLEY RANCH PARTNERS, LLC,
a Colorado limited liability company

By: OPG GVR Managers, LLC,
a Colorado limited liability company
Its: Managing Member

By: OPG Holding Company IV, LLC,
a Kansas limited liability company
Its: Sole Member

By: See Attached
Name: Matthew Gillam
Title: Authorized Representative

Contract Control Number:
Contractor Name:

HOST-202157596-01 / HOST-202055465-01
OPG Green Valley Ranch Partners, LLC

OPG GREEN VALLEY RANCH PARTNERS, LLC,
a Colorado limited liability company

By: OPG GVR Managers, LLC,
a Colorado limited liability company
Its: Managing Member

By: OPG Holding Company IV, LLC,
a Kansas limited liability company
Its: Sole Member

By: 
Name: Matthew Gillam
Title: Authorized Representative

EXHIBIT A

Project Timeline – The Reserves at Green Valley Ranch (Overland Property Group)
 4857 N. Salida St. and 4927 N. Salida St., Denver, Colorado 80249

| | |
|--|------------------|
| Construction financing closes | March 15, 2021 |
| General Contractor notice to proceed | March 15, 2021 |
| Construction completion | July 1, 2022 |
| Lease-up completion date of restricted units | March 1, 2023 |
| OED Payments begin – Estimated | December 1, 2028 |

| PERMANENT SOURCES | | USES | |
|------------------------|-------------------|-------------------------|-------------------|
| Perm Loan (CHFA) | 20,275,000 | Land and Site Work | 6,090,644 |
| LIHTC - 4% | 16,584,908 | Const. Interim Costs | 4,669,881 |
| City of Denver | 2,100,000 | Hard Costs | 24,220,555 |
| CDOH | 1,075,000 | Soft Costs + Prof. Fees | 1,988,111 |
| Deferred Developer Fee | 1,153,993 | Developer Fee | 3,378,388 |
| | | Reserves | 841,322 |
| TOTAL | 41,188,901 | TOTAL | 41,188,901 |

| Project Activities | Project Cost | City Funds | Other Funds |
|-------------------------|---------------------|--------------------|---------------------|
| Land and Site Work | 6,090,644 | | 6,090,644 |
| Const. Interim Costs | 4,669,881 | | 4,669,881 |
| Hard Costs | 24,220,555 | \$2,100,000 | 22,120,555 |
| Soft Costs + Prof. Fees | 1,988,111 | | 1,988,111 |
| Developer Fee | 3,378,388 | | 3,378,388 |
| Reserves | 841,322 | | 841,322 |
| | \$41,188,901 | \$2,100,000 | \$41,188,901 |