

PREPARED BY AND RETURN TO:  
Carolyn Clark Snipes  
Roberts & Stevens, P.A.  
P. O. Box 7647  
Asheville, NC 28802

**STATE OF NORTH CAROLINA**

**COUNTY OF BUNCOMBE**

**SECOND LOAN MODIFICATION AGREEMENT**

**THIS SECOND LOAN MODIFICATION AGREEMENT** (the “Second Modification”), is made and entered into to be effective the \_\_\_\_ day of \_\_\_\_\_ 2019, by and between **EAGLE MARKET PLACE, LLC**, a North Carolina limited liability company (hereinafter referred to as “Borrower”), **COUNTY OF BUNCOMBE** (hereinafter referred to as “County”), **EMP COMMERCIAL, LLC**, a North Carolina limited liability company (“EMP”), and collectively Borrower, County and EMP may be referred to as the "Parties".

**WITNESSETH:**

**WHEREAS**, the County, pursuant to a Community Development Loan Agreement dated December 10, 2013 (“Loan Agreement”), is the holder of a Note in the amount of Two Million Dollars (\$2,000,000.00) (“Note”) secured by a Deed of Trust to Michael C. Frue, Trustee, recorded in Book 5170 at Page 647 (“County Deed of Trust”) on the real property described therein (the “Property”);

**WHEREAS**, the maturity date of the Note is December 10, 2033;

**WHEREAS**, by unrecorded Modification of Community Development Loan Agreement effective August 2, 2016 (“Modification of CDL Agreement”), the Parties modified the rights and responsibilities of the Parties;

**WHEREAS**, the County consented to the recording of the Declaration of Condominium for Eagle Market Place Condominium recorded in Book 5688 at Page 1168, which was amended and restated by Amended and Restated Declaration of Condominium for Eagle Market Place

Condominium recorded in Book 5739 at Page 940, Buncombe County Registry (“Declaration”), wherein the Property was subjected to the Declaration creating two (2) units, Unit 100 being a commercial unit and Unit 200 being a residential unit;

**WHEREAS**, the Parties entered in a Loan Modification recorded in Book 5689 at Page 1596 (“Loan Modification”) wherein the Note was allocated between Unit 100 and Unit 200 of the Eagle Market Place Condominium, such that \$1,500,000.00 of the Note is secured by Unit 200 of Eagle Market Place Condominium as described on Exhibit A attached hereto (“Unit 200”) and \$500,000.00 of the Note is secured by Unit 100 of the Eagle Market Place Condominium as described on Exhibit B attached hereto (“Unit 100”), (the Loan Agreement, Note and County Deed of Trust, as modified by the Modification of CDL Agreement and Loan Modification, collectively referred to as “Loan Documents”);

**WHEREAS**, EMP is now the owner of Unit 100;

**WHEREAS**, contemporaneously herewith, EMP will enter into a new note and new deed of trust with the County for repayment of the Five Hundred Thousand Dollars (\$500,000.00) allocated to Unit 100;

**WHEREAS**, as contemplated by the Parties, Eagle Market Place, LLC is entering into a loan agreement with Bellwether Enterprise Real Estate Capital, LLC (“Bellwether”) pursuant to the Federal Home Loan Mortgage Corporation (“FHLMC”) Targeted Affordable Housing program for permanent financing of Unit 200 (“New Loan”) to replace the construction loan from TD Bank recorded in Book 5170 at Page 555, Buncombe County Registry;

**WHEREAS**, as a condition to the New Loan, Bellwether and FHLMC require the Loan Documents to be modified as stated herein; and

**WHEREAS**, Borrower and County have agreed to the required modifications; and

**WHEREAS**, except as modified herein, Borrower and the County have agreed that the terms of the Loans Documents referred to above shall remain in full force and effect.

**NOW THEREFORE**, in consideration of the mutual promises between the parties and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Borrower hereby amend the Loan Documents as follows:

1. The principal amount of Note is reduced by Five Hundred Thousand Dollars to the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00).
2. The term described in the Note shall be revised to “twenty-two (22) years”.
3. The maturity date of the Note shall be extended for two (2) additional years to December 10, 2035.
4. Activities Item 1 of Attachment A to the Loan Agreement, as modified by the

Modification of CDL Agreement and Loan Modification, is amended to state “A total of 62 units will be added to Asheville and Buncombe County’s affordable housing stock by December 31, 2018.”

5. The Work Task Items 5 through 9 of Attachment A to the Loan Agreement, as modified by the Modification of CDL Agreement and Loan Modification, are modified as follows:

5. Complete construction activities of building	2018
6. Certificate of Occupancy	September 2018
7. Begin lease-up activities	October 2018
8. 100% lease-up complete	December 2018
9. Close all permanent loans	Summer 2019

6. The County hereby releases and forever quitclaims unto EMP Commercial, LLC, its successor or assigns, Unit 100 of the Eagle Market Place Condominium, more particularly described on the attached Exhibit B, free and discharged from the lien of the County Deed of Trust recorded in Book 5170 at Page 647, as modified by the Loan Modification recorded in Book 5689 at Page 1596.
7. The County hereby releases Borrower and EMP from the obligations of the Loan Agreement, as modified by the Modification of CDL Agreement and Loan Modification, only to the extent that it may affect Unit 100, or the owner thereof.
8. Paragraph 1 on page 2 of the Loan Modification is hereby deleted in its entirety.
9. The second sentence of Paragraph 3 on page 2 of the Loan Modification is hereby deleted.
10. The Exhibit A Description of Real Property attached to the County Deed of Trust, is hereby deleted in its entirety, and replaced with the legal description of Unit 200 attached to this Second Modification as Exhibit A.
11. The Borrower further confirms, acknowledges, and represents to the County that the County Deed of Trust, as modified as to Unit 200, retains the same lien priority status as the County Deed of Trust prior to such modification.

Except as modified as set forth in this Second Modification, the remaining terms of said Loan Documents shall remain in full force and effect. To the extent the provisions of this Second Modification conflict with the Loan Documents, this Second Modification shall control. The Borrower confirms, acknowledges, and represents to the County that the Loan Documents are valid and binding in accordance with their respective terms, and except as modified by this Second Modification, shall remain in full force and effect and be binding upon the Borrower.

The Parties agree that this Second Modification constitutes amendment to the Loan Documents and does not constitute a novation.

**IN WITNESS WHEREOF**, the County and Borrower have caused this Second Loan Modification Agreement to be executed by their properly authorized representative on the date first above written.

[SIGNATURE AND NOTARY ACKNOWLEDGEMENTS ON THE FOLLOWING PAGES]

Attest:

COUNTY OF BUNCOMBE

\_\_\_\_\_  
County Clerk  
(official seal)

By: \_\_\_\_\_  
Avril Pinder, County Manager

**STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE**

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid certify that Lamar Joyner personally came before me this day and acknowledged that he is the County Clerk of County of Buncombe, and that by authority duly given by the corporation, the foregoing instrument was signed in its name by its County Manager and attested by himself as its County Clerk.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

EAGLE MARKET PLACE, LLC  
By: Mountain Housing Opportunities, Inc.,  
Managing Member

By: \_\_\_\_\_  
R. Scott Dedman, President

**STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE**

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid certify that R. Scott Dedman personally appeared before me this day and acknowledged that he is the President of Mountain Housing Opportunities, Inc., Managing Member of Eagle Market Place, LLC and by the authority given by the corporation, acknowledged the execution of the foregoing instrument on behalf the corporation, as Managing Member of Eagle Market Place, LLC.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

EMP Commercial, LLC  
By: Mountain Housing Opportunities, Inc.,  
Manager and Member

By: \_\_\_\_\_  
R. Scott Dedman, President

By: Eagle, Market Street Development Corporation (CDC)  
Manager and Member

By: \_\_\_\_\_  
Stephanie Swepson-Twitty, President

**STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE**

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid certify that R. Scott Dedman personally appeared before me this day and acknowledged that he is the President of Mountain Housing Opportunities, Inc., Manager and Member of EMP Commercial, LLC), and by the authority given by the corporation, acknowledged the execution of the foregoing instrument on behalf the corporation, as Manager and Member of EMP Commercial, LLC.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE**

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid certify that Stephanie Swepson-Twitty personally appeared before me this day and acknowledged that she is the President of Eagle, Market Street Development Corporation (CDC), Manager and Member of EMP Commercial, LLC, and by the authority given by the corporation, acknowledged the execution of the foregoing instrument on behalf the corporation, as Manager and Member of EMP Commercial, LLC.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



## **EXHIBIT A**

Being all of Unit 200 of Eagle Market Place Condominium as described in that Declaration of Condominium for Eagle Market Place Condominium, recorded in Book 5688 at Page 1168, Buncombe County Registry, as amended and restated in the Amended and Restated Declaration of Condominium for Eagle Market Place Condominium, recorded in Book 5739 at Page 940, Buncombe County Registry, reference to which is hereby made for a more particular description. A plat of Eagle Market Place Condominium is recorded in Plat Book 191 at Page 19, Buncombe County Registry. The architect's plans for Eagle Market Place Condominium are recorded in File No. 1575-1582. Buncombe County Registry. Together with an undivided interest in the Common Elements of Eagle Market Place Condominium as set forth in said Declaration.

## **EXHIBIT A**

Being all of Unit 100 of Eagle Market Place Condominium as described in that Declaration of Condominium for Eagle Market Place Condominium, recorded in Book 5688 at Page 1168, Buncombe County Registry, as amended and restated in the Amended and Restated Declaration of Condominium for Eagle Market Place Condominium, recorded in Book 5739 at Page 940, Buncombe County Registry, reference to which is hereby made for a more particular description. A plat of Eagle Market Place Condominium is recorded in Plat Book 191 at Page 19, Buncombe County Registry. The architect's plans for Eagle Market Place Condominium are recorded in File No. 1575-1582, Buncombe County Registry. Together with an undivided interest in the Common Elements of Eagle Market Place Condominium as set forth in said Declaration.