

PREPARED BY AND RETURN TO:  
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**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** (hereinafter referred to as "Borrower") and **COUNTY OF BUNCOMBE** (hereinafter referred to as "County"), and collectively Borrower and County may be referred to as the "Parties".

**WITNESSETH:**

**WHEREAS**, the County, pursuant to an Agreement for Services Related to Buncombe County's Housing Services Program dated January 8, 2013 ("Loan Agreement"), is the holder of a Note dated January 22, 2013, in the amount of Three Hundred Thousand Dollars (\$300,000.00) ("Note") secured by a Deed of Trust to Michael C. Frue, Trustee, recorded in Book 5062 at Page 222 ("County Deed of Trust") on the real property described therein (the "Property");

**WHEREAS**, the maturity date of the Note is January 22, 2033;

**WHEREAS**, by unrecorded Modification of Agreement for Services Related to Buncombe County's Housing Services Program effective August 2, 2016 ("Modification of Agreement"), the Parties modified the rights and responsibilities of the Parties, (the Loan Agreement, Modification of Agreement, Note and County Deed of Trust collectively referred to as "Loan Documents");

**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 County released the commercial Unit 100 from the lien of the County Deed of Trust, as modified, by Release Deed recorded in Book 5689 at Page 1576, Buncombe County Registry, leaving Unit 200 of Eagle Market Place Condominium, more particularly described on Exhibit A attached hereto, (“Unit 200”) as the sole collateral for the County Deed of Trust;

**WHEREAS**, as contemplated by the Parties, Eagle Market Place, LLC is entering into a loan agreement with Bellwether Enterprise Real Estate Capital, LLC (“Bellwether”) and the Federal Home Loan Mortgage Corporation (“FHLMC”) for permanent financing of Unit 200 (“New Loan”) to replace the construction loan from TD Bank recorded in Book 5170 at Page 55, Buncombe County Registry;

**WHEREAS**, as a condition to the New Loan, Bellwether and FHLMC require the Loan Agreement, Note, and County Deed of Trust 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 Loan Agreement, Note, and County Deed of Trust 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 for the Eagle Market Place project as follows:

1. The maturity date of the Note shall be extended for two additional years to January 22, 2035.
2. The Work Task Items 5 through 9 of Attachment A to the Loan Agreement as modified by the Modification of Agreement 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

3. Item 1 of the Activities in the Loan Agreement 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.”

4. The following provision shall be added to the Note:

Neither Borrower nor any of its partners, members, shareholders or officers shall have any personal obligation to repay the principal and interest due under the Loan Documents, and the County agrees to look solely to Unit 200 subject to the County Deed of Trust for satisfaction of the indebtedness evidenced hereby, and the County will not seek to procure payments of any portion of the principal or interest or any other sums due under the Note out of any other assets of Borrower or its partners, members, shareholders or officers, or to procure any judgment after foreclosure of the County Deed of Trust; provided, however, that nothing herein contained shall be deemed to be a release or impairment of said indebtedness or the security therefore, or be deemed to preclude the County from foreclosing the County Deed of Trust or from enforcing any of the County's other rights under the Loan Documents.

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 Agreement, Note, and County Deed of Trust 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.

Attest:

COUNTY OF BUNCOMBE

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

By: \_\_\_\_\_  
\_\_\_\_\_, County Manager

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 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 Interim 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: \_\_\_\_\_

**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: \_\_\_\_\_

## **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.