

**FIRST AMENDMENT  
TO  
DISPOSITION AND REDEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DISPOSITION AND REDEVELOPMENT AGREEMENT (this "First Amendment") is entered into and effective as of March 10, 2017 (the "Effective Date"), between the CITY OF LOVELAND, COLORADO, a Colorado home rule municipality (the "City") and The Foundry Loveland, LLC, a Colorado limited liability company (the "Developer"). The City and the Developer shall be collectively referred to hereafter as "Parties."

**RECITALS:**

- A. The City and Developer are parties to that certain Disposition and Redevelopment Agreement dated December 13, 2016 ("DRA");
- B. On February 13, 2017, Developer delivered to the City its Notice of Title and Due Diligence Objections pursuant to Section 6.2 of the DRA ("Developer Objection");
- C. On February 22, 2017 and February 28, 2017, the City sent its Responses to Due Diligence and Title Objections and Amendment thereto (collectively "City Response");
- D. This First Amendment, together with that certain Title Resolution Agreement between the Parties of even date herewith resolves the issues, or in the case of Section 3 below extends the deadlines to resolve certain objections raised in Developer's Objection, all upon the terms and conditions set forth in this First Amendment and the accompanying Title Resolution Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby agreed upon by the Parties, the Parties agree as follows:

**AGREEMENT**

- 1. Incorporation of Recitals. The above stated recitals are hereby incorporated as substantive terms of this First Amendment.
- 2. Amendments to DRA.
  - a. Section 5.3. The last two sentences of Section 5.3 are hereby deleted and replaced with the following:

*The City shall keep and maintain its current Environmental Liability Policy in place, upon the same terms and conditions until expiration of the existing policy term, subject to limitations in the current policy, if any, that would cause coverage to expire or terminate for certain property no longer owned by the insured. The City Policy shall include a waiver of subrogation against Developer. Additionally, the City shall amend its coverage on an*

*on-going basis to the extent the identification of parcel or street addresses are modified to ensure coverage is consistent with the legal identification for the City Parcel.*

*The Developer shall obtain a new Environmental Liability Policy for the Developer Parcel, which policy shall be for at least ten (10) years, in the form of two (2), five (5) year policy terms in the minimum amount of \$10,000,000 with a maximum deductible of \$100,000 ("Developer Policy") and subject to annual appropriation, the City shall pay the reasonable costs of the premiums on such Developer Policy.*

b. Section 6.2.5. Section 6.2.5 is hereby deleted in its entirety and replaced with the following:

*The Parties agree that the extent of the improvements required to be made by Developer to the intersection of East 1<sup>st</sup> Street and Lincoln Avenue as a part of the Project shall be limited to the construction of a right-hand turn lane. The Developer shall be responsible for one-half (1/2) of the cost of such improvements and in no event shall Developer's share of the cost exceed \$100,000.*

*Additionally, through the Entitlement Process, the City requested that Developer make certain off-site improvements to the Cleveland Avenue and Lincoln Avenue rights-of-way ("Additional ROW Improvements") the areas of which are depicted as ROW Improvements on Exhibit I which is attached hereto and incorporated by reference herein. The City withdraws such request, and the Parties agree to the process set forth below. The City shall have the option to construct the Additional ROW Improvements at its sole cost. In such case, the City shall notify Developer in writing on or before March 28, 2017 of its election to do so. Alternatively, subject to City Council approval, which final approval shall be obtained on or before Closing, the Developer shall construct the Additional ROW Improvements in connection with the Project and the City will reimburse Developer for the cost of such improvements in an amount not to exceed \$1,000,000 pursuant to the reimbursement process set forth in Exhibit G. For the avoidance of doubt, the City's obligation to reimburse the Developer for the costs of the Additional ROW Improvements is an additional obligation of the City, and shall be separate and apart from its obligation to reimburse the Developer up to the Cap Amount for Eligible Costs.*

c. Section 8.1.1. Section 8.1.1 is hereby deleted in its entirety and replaced with the following:

*Developer's receipt of all Development Approvals for the Site relating to the construction of Phase One of the Project shall not be a condition of Closing. Rather, the Parties will negotiate in good faith to create a schedule of Phase One Development Approvals ("Phase One Development Approval Schedule") that is acceptable to both Parties. Developer shall prepare and deliver the first draft of the Phase One Development Approval Schedule to the City on or before March 17, 2017. To the extent the Phase One Development Approval*

*Schedule is not agreed upon by the Parties on or before March 28, 2017, then Developer in the exercise of its sole and absolute discretion may terminate the DRA pursuant to Section 6.2. The parties will diligently pursue all Development Approvals pursuant to the agreed upon Phase One Development Approval Schedule. In the event Developer elects to close without having obtained all Phase One Development Approvals, Developer waives the right to object to such matters under Section 6.2 and the Entitlement Period shall expire upon Closing. The Parties shall memorialize their agreement to such Phase One Development Approval Schedule by attaching such schedule to an amendment to the DRA.*

d. Section 18. The third paragraph of Section 18, beginning with “The Developer and any subsequent owner of any parcel comprising the Developer Parcel . . .” and ending with “. . . is reconveyed to the City in accordance with Section 12.8 hereof” is hereby deleted in its entirety and replaced with the following two paragraphs:

*Notwithstanding anything herein to the contrary, the obligation to make Payments in Lieu of Taxes shall not be an obligation of Developer. Rather, the obligation to make Payments in Lieu of Taxes shall be the separate obligation of the owners of each of the four parcels (“Parcel Owners”) on a parcel by parcel basis as set forth in Exhibit E, and such ongoing obligation shall be a burden that runs with the land (“PILOT Covenant”). The PILOT Covenant shall be recorded at Closing, and shall replace the Developer’s obligations under this Section 18. The Parties will negotiate in good faith to draft a PILOT Covenant that is acceptable to both Parties, and Developer shall prepare and deliver the first draft of the PILOT Covenant to the City on or before March 28, 2017. To the extent the PILOT Covenant is not agreed upon by the Parties, then Developer in the exercise of its sole and absolute discretion may terminate the DRA pursuant to Section 6.2 on or before Closing. The Parties shall not be required to further amend the DRA to agree upon the form of the PILOT Covenant, rather the execution of the PILOT Covenant at Closing shall evidence the parties agreement to the form of the document.*

*The PILOT Covenant shall provide that the Parcel Owners’ obligation to make Payment in Lieu of Taxes shall terminate upon the payment or defeasance of all outstanding Bonds and any other bonds or other obligations issued to refinance or refund such Bonds. Notwithstanding the foregoing or any provision to the contrary contained herein, no Payment in Lieu of Taxes shall be made with respect to the Phase Two Parcel in the event that the Phase Two Parcel is reconveyed to the City in accordance with Section 12.8 of the DRA.*

e. Section 20.2. The term “Construction Drawings Submission Deadline” shall be defined as “August 31, 2017.” The City agrees and acknowledges that the construction drawings may be submitted by the Developer incrementally.

f. Exhibit E. Exhibit E to the DRA is hereby deleted in its entirety, and replaced with Exhibit E-1 which is attached hereto and incorporated by reference herein.

3. Extension of Time to Resolve Other Outstanding Matters. The following issues have been raised by the Developer in the Developer Objection, and the Parties agree as follows:

a. Developer Due Diligence Objection No. 5. To the extent: (i) an agreed upon transfer plan relating to the underground portion of the Parking Garage located on the Developer Parcel; and/or (ii) an agreed upon Parking Facility Operation's Plan; are not agreed upon on or before Closing, Developer in the exercise of its sole and absolute discretion may terminate the DRA pursuant to Section 6.2. In an effort to resolve such issues, the Parties agree that on or before March 28, 2017, the City will provide Developer with a draft of the proposed parking and reimbursements covenants and facilities plan, and the Developer will provide the City with proposed governance documents for a condo association and basic rendering of the units.

b. Developer Due Diligence Objection No. 9. To the extent a Lease Agreement for 320 North Cleveland Avenue has not been agreed upon by the parties on or before March 28, 2017, then Developer in the exercise of its sole and absolute discretion may terminate the DRA pursuant to Section 6.2. The Parties shall memorialize their agreement to such Lease Agreement by attaching the document to an amendment to the DRA.

4. No Further Amendments and Agreements. Except as modified as set forth herein, the DRA shall remain in full force and effect. Developer specifically retains all rights to object together with the remedies associated therewith to the extent such rights have not expired pursuant to the terms and conditions of the DRA.

5. Counterparts. This First Amendment may be executed in separate counterparts (including by means of facsimile or electronic mail delivery of a ".pdf" format data file), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have entered into this First Agreement on the date set forth above.

CITY:

CITY OF LOVELAND,  
a Colorado home rule municipality

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

  
Rod Wensing, Acting City Manager

ATTEST:

*Achieve  
Deputy*

*Lucretia Gyll-Sutton*  
City Clerk



APPROVED AS TO FORM:

*Maes Jamie*  
Asst. City Attorney

DEVELOPER:

The Foundry Loveland, LLC,  
a Colorado limited liability company

By: Brinkman Entity Management, LLC,  
a Colorado limited liability company,  
its Manager

By:

Paul Brinkman, Manager

Exhibit E-1

[Attached]

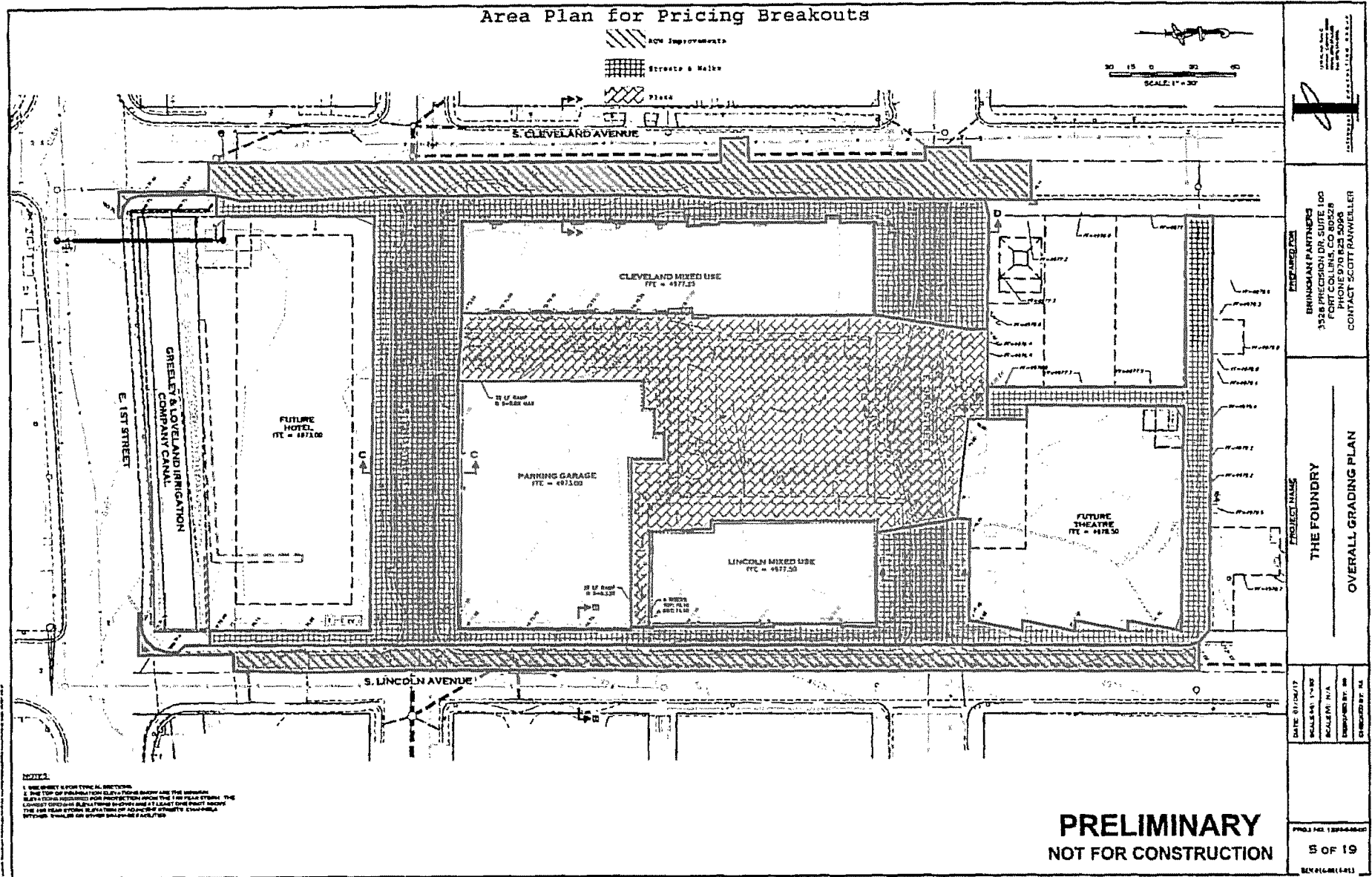
**EXHIBIT E-1  
MINIMUM PROPERTY TAX INCREMENT REVENUES**

Levy Year	Payment Year	Total Guaranteed Payment By Parcel						Total Guaranteed Payment
		Commerical Movie Theater	Commercial Hotel	Cleveland Mixed use		Lincoln Mixed Use		
				Residential	Non-Residential	Residential	Non-Residential	
2019	2020	\$87,451	\$71,305	\$133,077	\$23,692	\$75,276	\$26,682	\$417,483
2020	2021	\$89,200	\$277,447	\$135,738	\$24,166	\$76,781	\$27,216	\$630,549
2021	2022	\$90,984	\$282,996	\$138,453	\$24,650	\$78,317	\$27,760	\$643,160
2022	2023	\$92,804	\$288,656	\$141,222	\$25,143	\$79,883	\$28,315	\$656,023
2023	2024	\$94,660	\$294,429	\$144,047	\$25,645	\$81,481	\$28,882	\$669,144
2024	2025	\$96,553	\$300,318	\$146,928	\$26,158	\$83,111	\$29,459	\$682,526
2025	2026	\$98,484	\$306,324	\$149,866	\$26,681	\$84,773	\$30,048	\$696,177
2026	2027	\$100,454	\$312,451	\$152,864	\$27,215	\$86,468	\$30,649	\$710,101
2027	2028	\$26,208	\$81,517	\$39,881	\$7,100	\$22,559	\$7,996	\$185,261
2028	2029	\$26,732	\$83,147	\$40,679	\$7,242	\$23,010	\$8,156	\$188,966
2029	2030	\$27,267	\$84,810	\$41,492	\$7,387	\$23,470	\$8,319	\$192,745
2030	2031	\$27,812	\$86,506	\$42,322	\$7,535	\$23,940	\$8,486	\$196,600
2031	2032	\$28,368	\$88,236	\$43,169	\$7,686	\$24,419	\$8,655	\$200,532
2032	2033	\$28,935	\$90,001	\$44,032	\$7,839	\$24,907	\$8,828	\$204,543
2033	2034	\$29,514	\$91,801	\$44,913	\$7,996	\$25,405	\$9,005	\$208,634
2034	2035	\$30,104	\$93,637	\$45,811	\$8,156	\$25,913	\$9,185	\$212,806
2035	2036	\$30,707	\$95,510	\$46,727	\$8,319	\$26,432	\$9,369	\$217,062
2036	2037	\$31,321	\$97,420	\$47,662	\$8,485	\$26,960	\$9,556	\$221,404
2037	2038	\$31,947	\$99,368	\$48,615	\$8,655	\$27,499	\$9,747	\$225,832
2038	2039	\$32,586	\$101,356	\$49,587	\$8,828	\$28,049	\$9,942	\$230,348
2039	2040	\$33,238	\$103,383	\$50,579	\$9,005	\$28,610	\$10,141	\$234,955
2040	2041	\$33,903	\$105,450	\$51,591	\$9,185	\$29,183	\$10,344	\$239,654
2041	2042	\$34,581	\$107,559	\$52,622	\$9,369	\$29,766	\$10,551	\$244,448
2042	2043	\$35,272	\$109,711	\$53,675	\$9,556	\$30,362	\$10,762	\$249,336
2043	2044	\$35,978	\$111,905	\$54,748	\$9,747	\$30,969	\$10,977	\$254,323
2044	2045	\$36,697	\$114,143	\$55,843	\$9,942	\$31,588	\$11,197	\$259,410
2045	2046	\$37,431	\$116,426	\$56,960	\$10,141	\$32,220	\$11,421	\$264,598

Exhibit I

[Attached]

Exhibit I



BRUNDMAN PARTNERS  
 3528 PRECISION DR. SUITE 100  
 FORT COLLINS, CO 80528  
 PHONE 970 823 5088  
 CONTACT: SCOTT RAYWELLER

**PROJECT NAME**  
 THE FOUNDRY  
**OVERALL GRADING PLAN**

DATE: 01/26/17  
 DRAWN BY: N/A  
 SCALE: N/A  
 CHECKED BY: BK  
 DESIGNED BY: ML

**PRELIMINARY**  
 NOT FOR CONSTRUCTION

PROJ. NO. 1205-04-02  
 5 OF 19  
 MXP16-M(1-11)