

**AGREEMENT REGARDING  
LODGING FEE SHORTFALL  
WITH IRREVOCABLE LETTER OF CREDIT**

THIS AGREEMENT, dated this 5<sup>th</sup> day of MARCH, 2019, between the City of Loveland, Colorado, a Municipal Corporation (hereinafter called "City") and The Foundry Loveland, LLC, a Colorado limited liability company (hereinafter called "Developer").

**WITNESSETH:**

WHEREAS, the City and Developer are parties to that certain Disposition and Redevelopment Agreement dated as of December 13, 2016, as amended by the First Amendment to Disposition and Redevelopment Agreement dated as of March 10, 2017, the Second Amendment to Disposition and Redevelopment Agreement dated as of April 26, 2017, the Third Amendment to Disposition and Redevelopment Agreement dated as of June 23, 2017 (the "Third Amendment"), and the Fourth Amendment to Disposition and Redevelopment Agreement dated as of July 20, 2018 ("Fourth Amendment," collectively, the "DRA"); and

WHEREAS, unless otherwise defined herein, capitalized terms shall have the meaning given to them in the DRA; and

WHEREAS, the Third Amendment provided, in part, that to the extent that the amount of revenues estimated by the Developer to be generated from the imposition of 2% of the Lodger's Fee is less than \$78,000 in any year, then the District Pledge Agreement entered into between the City and Foundry Loveland Metropolitan District (the "District") shall require the District to impose a mill levy in an amount sufficient to make up any difference between \$78,000 and such estimated amount ("Lodger's Fee Shortfall Amount"); and

WHEREAS, the City and the District entered into a First Amendment to District Pledge Agreement dated November 1, 2017, to address, among other things, the District's obligation to impose the "District Parking Operations Mill Levy" in an amount sufficient to generate revenues in a given year sufficient to make up the Lodger's Fee Shortfall Amount; and

WHEREAS, the Fourth Amendment provided, in part, that the City and the District may amend the District Pledge Agreement to provide that the District shall not be required to impose the District Parking Operations Mill Levy to the extent that the Developer provides a surety bond or other guarantee satisfactory to the City Manager that would fund any Lodger's Fee Shortfall Amount in any year, the form of such surety or guarantee shall be set forth in an amendment and approved by the City Council; and

WHEREAS, the Developer desires to provide an irrevocable letter of credit to the City as surety in lieu of the District imposing a District Parking Operations Mill Levy to make up any

Lodger's Fee Shortfall Amount, and to that end, the District and City have entered into a Second Amendment to the District Pledge Agreement to provide, in part, for the Developer to provide the City with an irrevocable letter of credit as set forth in the Fourth Amendment; and

WHEREAS, the City and the Developer are entering into this Agreement to set forth the terms and conditions for the irrevocable letter of credit to be provided by the Developer.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained, it is agreed as follows:

1. In the event the revenues generated from the imposition of the Lodger's Fee is less than \$78,000 in any given year, the Developer shall make up the Lodger's Fee Shortfall Amount in an amount not to exceed \$78,000 ("Maximum Lodger's Fee Shortfall Amount"). The Developer will furnish the City a letter of credit from a bank or other financial institution ("Issuer") acceptable to the City, similar in form as attached hereto as Exhibit "A" guaranteeing that funds in the amount of the Maximum Lodger's Fee Shortfall Amount are held by it for the account of the Developer for the purpose of securing Developer's promise to make up any Lodger's Fee Shortfall Amount in any given year. If a Lodger's Fee Shortfall Amount occurs in any given year, the City shall be entitled to draw down such funds under the letter of credit in an amount equal to the Lodger's Fee Shortfall Amount in said year. Upon the occurrence of a "Triggering Event" (as such term is defined in the First Amendment to the District Pledge Agreement), any amounts due under the letter of credit shall be payable directly to the Trustee, or its designee.

Notwithstanding the foregoing, in the event that there is no Lodger's Fee Shortfall Amount for three consecutive calendar years, the City Manager shall meet with a representative of the Developer to discuss reducing the required amount of the letter of credit to an amount less than the Maximum Lodger's Fee Shortfall Amount, and the City Manager shall thereupon be authorized, without further approval by the City Council, to reduce the required letter of credit to an amount deemed necessary by the City Manager to protect the interests of the City. If a Triggering Event has occurred, the City Manager shall not be authorized to reduce the required amount of the letter of credit without the prior written consent of the Trustee and the Initial Purchaser.

2. The Developer shall renew the letter of credit annually, unless the City Manager and the City Council approve a different form of surety or guarantee.
3. In the event that Developer breaches its obligations under this Agreement, the City shall be entitled to direct and consequential monetary damages, equitable relief, including specific performance, and such other remedies at law or in equity as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party whether plaintiff or defendant shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party.

(REMINDER OF PAGE INTENTIONALLY LEFT BLANK.)





ATTEST

CITY OF LOVELAND

By: *Patricia*

By: *Stephen Adams*

Title: *City Clerk*

Title: *City Manager*

APPROVED AS TO FORM

*Moser Garai*  
City Attorney *Moser Garai*

**Exhibit "A"**

**INSERT FINANCIAL INSTITUTION NAME & LETTERHEAD**

IRREVOCABLE LETTER OF CREDIT NO. insert financial institution LOC number

ISSUE DATE: \_\_\_\_\_, 2019

APPLICANT: The Foundry Loveland, LLC

BENEFICIARY: City of Loveland  
500 East Third Street  
Loveland, CO 80537

AMOUNT: \$78,000

MATURITY DATE: **Insert date one year from date of issue**

Dear Sir or Madam:

We hereby establish our irrevocable Letter of Credit in your favor in the amount of Seventy-Eight Thousand Dollars (\$78,000). The purpose of this Letter of Credit is to secure performance of an Agreement for Lodging Fee Shortfall ("Agreement") entered into between the City and the Applicant.

You are hereby authorized to draw on sight on **insert name of financial institution**, by drafts, up to the aggregate amount of Seventy-Eight Thousand Dollars (\$78,000). Such total amount to be drawn shall be equal to the Lodger's Fee Shortfall Amount, as defined in the Agreement.

The sole condition for payment of any draft drawn against this Letter of Credit is that the draft be accompanied by a letter, on the City's letterhead, signed by the City Manager or other City designee to the effect that a Lodger's Fee Shortfall has occurred and the amount drawn down is equal to the Lodger's Fee Shortfall Amount. In the event of wrongful dishonor, we will reimburse the City for all court costs, investigative costs and reasonable attorney fees incurred by the City in enforcing this letter of credit. We further agree that jurisdiction and venue for any legal action enforcing this letter of credit shall be in the District Court of Larimer County, Colorado.

We hereby agree with drawers and endorsers, and bona fide holders of drafts negotiated under this Letter of Credit that the same shall be duly honored upon presentation and delivery of the documents as specified above.

Multiple drafts may be presented.

This Letter of Credit will be automatically renewed annually without amendments as stated in the Agreement, for one year periods from the present, unless Issuer delivers written notice within ninety (90) days prior to any such expiration date to the City of Loveland of its intent not to renew this Letter of Credit. Any such notice shall be in writing and shall be delivered with an acknowledged receipt, either in hand or by certified mail. Prior to any renewal,

This Letter of Credit is not transferable, except that upon the occurrence of a Triggering Event, this Letter of Credit shall be payable directly to the Trustee, or its designee.

This Letter of Credit sets forth in full our understanding, and such undertaking shall not in anyway be modified, amended, amplified, or limited by reference to any document, instrument or agreement referred to herein, except for such certificate and draft(s) referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such certificate and draft(s).

Except so far as otherwise expressly stated herein, this Letter of Credit shall be subject to Article 5 of the State of Colorado Uniform Commercial Code (UCC) and the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (UCPDC). To the extent of any conflict between the UCC and the UCPDC, the UCC shall control.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ on behalf of **insert name of financial institution.**

\_\_\_\_\_  
Name, Title  
Name of financial institution

On behalf of The Foundry Loveland, LLC, I hereby authorize **insert name of financial institution** to pay the City of Loveland (or, upon the occurrence of a Triggering Event, to pay to the Trustee or its designee), all, or a portion of this Letter of Credit upon receipt by **insert name of financial institution** of the letter described in paragraph 3 above, and waive any claims or defenses which I may have to the payment to the City of Loveland by **insert name of financial institution.**

\_\_\_\_\_  
Name, Title  
Authorized Agent of The Foundry Loveland, LLC