

**SECOND AMENDMENT TO
DISTRICT PLEDGE AGREEMENT**

This SECOND AMENDMENT TO DISTRICT PLEDGE AGREEMENT (this "Second Amendment"), is made and entered into and dated as of January 15, 2019 between the CITY OF LOVELAND, COLORADO, a municipal corporation duly organized and existing as a home rule city under Article XX of the Constitution of the State of Colorado and under the Charter of the City (the "City") and the FOUNDRY LOVELAND METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District").

RECITALS

WHEREAS, the City and the District entered into that certain District Pledge Agreement, dated April 26, 2017, as amended by a First Amendment to District Pledge Agreement (collectively, the "Pledge Agreement"); and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the Pledge Agreement; and

WHEREAS, pursuant to the Pledge Agreement, the District agreed to impose the District Debt Service Mill Levy in accordance with the provisions of the DRA, and (a) pledge the District Pledged Revenue to the payment of the debt service requirements on the Bonds, or (b) at the written direction of the City, remit all or a portion of the District Pledged Revenue to the City or its designee; and

WHEREAS, the City and Developer entered into the Third Amendment to the DRA, dated June 23, 2017, to address, among other matters, additional funding from the District for the operation and maintenance of the Parking Facility; and

WHEREAS, the City and the District entered into the First Amendment to District Pledge Agreement, dated November 1, 2017 ("First Amendment"), to address, among other things, the District's obligation to impose the District Parking Operations Mill Levy (as defined in the First Amendment) in certain circumstances; and

WHEREAS, pursuant to the First Amendment, to the extent annual revenues from the imposition of 2% of the Lodger's Fee (as defined in the First Amendment) are less than \$78,000, the District is required to impose its District Parking Operations Mill Levy in an amount sufficient to make up any difference between \$78,000 and such amount generated from the imposition of 2% of the Lodger's Fee (the "Lodger's Fee Shortfall Amount"); and

WHEREAS, the City and Developer entered into the Fourth Amendment to the DRA, dated July 20, 2018, to address, among other matters, additional costs associated with the Project (as defined in the DRA) ("Fourth Amendment"); and

WHEREAS, the Fourth Amendment provides that the Pledge Agreement may be amended to provide that the District shall not be required to impose its District Parking

Operations Mill Levy, to the extent the Developer provides a surety bond or other guarantee satisfactory to the City Manager that would fund the Lodger's Fee Shortfall Amount in any year; and

WHEREAS, the Fourth Amendment further provides that any such surety or guarantee shall be set forth in an amendment to the Pledge Agreement and approved by the City Council; and

WHEREAS, the Developer has agreed to provide surety in the form set forth in **Exhibit "A"**, attached hereto and incorporated herein by this reference, to fund the Lodger's Fee Shortfall Amount in any year; and

WHEREAS, the form of surety attached as **Exhibit "A"** has been determined to be satisfactory by the City Manager; and

WHEREAS, on January 15, 2019 the City Council adopted a resolution authorizing the issuance of debt by the District, in one or more series, as described in and subject to, the provisions of such resolution; and

WHEREAS, the District intends to enter into a loan with Compass Bank (the "2019 Compass Loan") in accordance with the parameters described in **Exhibit "B"**, attached hereto and incorporated herein by this reference; and

WHEREAS, as provided in Pledge Agreement Section 17.f., the Pledge Agreement may only be amended or supplemented in writing by an instrument executed by the Parties thereto, and to the extent that the Parking Facility constitutes Leased Property under the Site Lease, this Pledge Agreement shall not be subject to amendment without the prior written consent of the Trustee and the Initial Purchaser; and

WHEREAS, as of the date of execution and delivery of this Second Amendment, the Parking Facility does not constitute Leased Property under the Site Lease; and

WHEREAS, the City and the District desire to amend the Pledge Agreement pursuant to this Second Amendment to provide that the District shall not be required to impose its District Parking Operations Mill Levy, based on the provision, by the Developer, of surety in the form attached hereto as **Exhibit "A"**, and to make additional amendments to the Pledge Agreement related to the Developer's provision of such surety and the 2019 Compass Loan.

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants and stipulations herein, the parties hereby amend the Pledge Agreement as follows:

1. The Pledge Agreement is hereby amended to add the following Section 3.5(k):

(k) Except as otherwise provided in Section 3.5(l) hereof, the District shall have no obligation to impose its District Parking Operations Mill Levy in any year so long as the Developer has provided surety that is enforceable in such year, in the form attached hereto as **Exhibit "A"**. The form of such surety has been determined to be satisfactory by the City Manager and has been approved by the City Council. Upon the occurrence of a Triggering Event, any amounts due pursuant to such surety shall be payable directly to the Trustee, or its designee.

2. The Pledge Agreement is hereby amended to add the following Section 3.5(l):

(l) In the event that the surety provided by the Developer is not in effect in any year, or a default has occurred thereunder, or such surety does not provide sufficient funds to cover the entire amount of the Lodger's Fee Shortfall Amount in any year, the District shall be obligated to impose its District Parking Operations Mill Levy to fund any such Lodgers Fee Shortfall Amount, provided that the District's obligation to impose such mill levy shall be subordinate to the obligation of the District to impose an ad valorem tax to meet its obligations pursuant to the 2019 Compass Loan.

3. The Pledge Agreement is hereby amended to replace the definition of District Debt Service Mill Levy with the following:

"District Debt Service Mill Levy" means a property tax imposed by the District in an amount equal to twenty-five (25) mills levied by the District on the taxable property within the District in accordance with the District Pledge Agreement. The District Debt Service Mill Levy rate shall be adjusted as set forth in the Service Plan to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to the extent possible, the revenue produced by such District Debt Service Mill Levy is neither diminished nor enhanced as a result of such changes.

4. This Second Amendment shall be effective only upon the execution by the Developer and delivery to the City, of the surety in the form set forth in **Exhibit "A"** and the delivery of the letter of credit to the City in accordance therewith.

5. Except as otherwise provided herein, the provisions of the Pledge Agreement and First Amendment shall remain in full force and effect.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the City and the District have executed this Second Amendment to Pledge Agreement as of the day and year first above written.

FOUNDRY LOVELAND METROPOLITAN DISTRICT

SK Stearman

President

ATTEST:

Ashley Davidson

Secretary

CITY OF LOVELAND, COLORADO

Stephen Adams

City Manager



ATTEST:

Patti Sz:

City Clerk

APPROVED AS TO FORM:

Moses Garcia

City Attorney, *Moses Garcia*

**EXHIBIT A
TO SECOND AMENDMENT TO DISTRICT PLEDGE AGREEMENT**

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

THIS AGREEMENT, dated this _____ day of _____, 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: _____

By: _____

Title: _____

Title: _____

APPROVED AS TO FORM

City Attorney

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

EXHIBIT B
TO SECOND AMENDMENT TO DISTRICT PLEDGE AGREEMENT

2019 Compass Loan Parameters

Sources		Uses	
Loan Proceeds		Payoff Outstanding Developer Loan	\$ 800,000
Tax-Exempt Loan	\$ 995,000	Capitalized Interest Thru/Including 12/1/19 (est)	
Taxable Loan	420,000	Tax-Exempt Loan	74,000
		Taxable Loan	39,000
		Debt Service Reserve Fund (MADS)	
		Tax-Exempt Loan	64,000
		Taxable Loan	31,000
		Deposit to Project Fund	350,000
		Cost of Issuance	51,000
		Contingency	6,000
Total Sources	\$1,415,000	Total Uses	\$ 1,415,000

**FOUNDRY LOVELAND METROPOLITAN DISTRICT
FULL GROWTH MODEL (Developer Projections)**

	Construction Year -->											
	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	
	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048		

Assessed Year -->	2040	2041	2042	2043	2044	2045	2046	2047	2048	
Collection Year -->	2041	2042	2043	2044	2045	2046	2047	2048		
Units	99	56	102							
Comm. SE	91,031	50,534	62,910							
Value/SE	\$195,000	\$100,000	\$123,000							
Value/SE	\$100,000	\$195,000	\$100,000							

Market Value - New Construction	2040	2041	2042	2043	2044	2045	2046	2047	2048
Residential	659,815	2,422,840	2,471,297	2,520,723	2,570,157	2,619,591	2,669,025	2,718,459	2,767,893
Commercial	301,958	4,465,953	4,555,272	4,644,591	4,733,910	4,823,229	4,912,548	5,001,867	5,091,186
Market Value - Bi-Annual Reassessment	673,011	2,471,297	2,471,297	2,520,723	2,570,157	2,619,591	2,669,025	2,718,459	2,767,893
Residential	-	2,422,840	2,471,297	2,520,723	2,570,157	2,619,591	2,669,025	2,718,459	2,767,893
Commercial	-	4,465,953	4,555,272	4,644,591	4,733,910	4,823,229	4,912,548	5,001,867	5,091,186
Total Cumulative Market Value	\$33,650,554	\$33,650,554	\$34,323,565	\$35,010,037	\$35,710,237	\$36,424,442	\$37,148,647	\$37,882,852	\$38,617,057

Cumulative Market Value	2040	2041	2042	2043	2044	2045	2046	2047	2048
Residential	659,815	2,422,840	2,471,297	2,520,723	2,570,157	2,619,591	2,669,025	2,718,459	2,767,893
Commercial	301,958	4,465,953	4,555,272	4,644,591	4,733,910	4,823,229	4,912,548	5,001,867	5,091,186
Total Cumulative Market Value	\$33,650,554	\$33,650,554	\$34,323,565	\$35,010,037	\$35,710,237	\$36,424,442	\$37,148,647	\$37,882,852	\$38,617,057

Cumulative Assessed Value	2040	2041	2042	2043	2044	2045	2046	2047	2048
Residential @ 7.20% RAR	2,422,840	2,422,840	2,471,297	2,520,723	2,570,157	2,619,591	2,669,025	2,718,459	2,767,893
Commercial @ 29%	4,465,953	4,465,953	4,555,272	4,644,591	4,733,910	4,823,229	4,912,548	5,001,867	5,091,186
Total Cumulative Assessed Value	\$6,888,793	\$6,888,793	\$7,026,568	\$7,167,100	\$7,310,442	\$7,456,820	\$7,607,573	\$7,762,326	\$7,921,079

Maximum Mill Levy Available for Debt Service	2040	2041	2042	2043	2044	2045	2046	2047	2048
Property Tax Available @ Max Mill Levy	\$137,776	\$137,776	\$140,531	\$143,342	\$146,209	\$149,133	\$152,113	\$155,147	\$158,235
Specific Ownership Taxes (est. @ 8.5% of Property Taxes)	11,711	11,711	11,945	12,184	12,428	12,676	12,928	13,184	13,444
Total Pledged Revenue	\$149,487	\$149,487	\$152,477	\$155,526	\$158,637	\$161,809	\$165,041	\$168,331	\$171,679

Debt Service 2018 Loan (see below)	2040	2041	2042	2043	2044	2045	2046	2047	2048
Excess Revenue [Available for any Lodgers Fee shortfall]	\$50,234	\$50,566	\$54,269	\$57,609	\$58,000	\$61,504	\$62,007	\$65,511	\$66,014
Debt Service Coverage @ Max Mill Levy	1.51x	1.51x	1.55x	1.59x	1.59x	1.63x	1.64x	1.67x	1.68x
Actual Mill Levy Required for Debt Service (Net of SOT)	13.2	13.1	12.8	12.8	12.5	12.2	12.1	11.9	11.7

DEBT SERVICE DETAIL - 2018 LOAN:	2040	2041	2042	2043	2044	2045	2046	2047	2048
Loan-Exempt Loan	\$995,000								
Interest (4.68% thru Loan Term; 5.5% thereafter)	25,439	23,085	20,620	18,037	15,332	12,498	9,530	6,421	3,164
Less: Capitalized Interest	73,490								
Principal	42,796	44,828	46,956	49,186	51,521	53,968	56,530	59,214	61,900
Reserve Fund Earnings	(160)	(160)	(160)	(160)	(160)	(160)	(160)	(160)	(160)
Taxable Loan	\$420,000								
Interest (5.92% thru Loan Term; 6.0% thereafter)	12,756	11,646	10,470	9,222	7,902	6,498	5,010	3,432	1,764
Less: Capitalized Interest	39,279								
Principal	18,500	19,600	20,800	22,000	23,400	24,800	26,300	27,800	29,400
Reserve Fund Earnings	(78)	(78)	(78)	(78)	(78)	(78)	(78)	(78)	(78)
Total Debt Service	\$99,253	\$98,921	\$98,608	\$98,207	\$97,917	\$97,526	\$97,132	\$96,729	\$96,316

Unpaid Principal Balance	2040	2041	2042	2043	2044	2045	2046	2047	2048
Tax-Exempt Loan	\$419,729	\$374,901	\$327,945	\$278,759	\$227,238	\$173,270	\$116,740	\$57,526	\$ -
Taxable Loan	194,100	174,500	153,700	131,700	108,300	83,500	57,200	29,400	-
Total Unpaid Principal Balance	\$613,829	\$549,401	\$481,645	\$410,459	\$335,538	\$256,770	\$173,940	\$86,926	\$ -