

**THIRD AMENDMENT  
TO  
DISPOSITION AND REDEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT TO DISPOSITION AND REDEVELOPMENT AGREEMENT (this “Third Amendment”) is entered into to be effective as of June 23, 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 as of December 13, 2016, as amended by the First Amendment to Disposition and Redevelopment Agreement dated as of March 10, 2017 (the “First Amendment”) and the Second Amendment to Disposition and Redevelopment Agreement dated as of April 26, 2017 (the “Second Amendment” and collectively, the “DRA”);

B. Capitalized terms that are not defined herein shall have the meanings ascribed to such terms in the DRA; and

C. The Parties have determined that certain other amendments to the DRA will be mutually beneficial.

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged 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 Third Amendment.

2. Amendments to DRA.

a. Section 1. Definitions. The following definitions shall be amended and restated in their entirety as follows:

“District Pledge Agreement” means an agreement between the City and the District pursuant to which the District agrees to impose the District Debt Service Mill Levy in accordance with the provisions of this Agreement, 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. The District Pledge Agreement shall also require the District to impose a mill levy to be applied to the operation and maintenance of the Parking Facility in accordance with Section 19.12(e) hereof.

“Force Majeure” means any delays in or failure of performance by any Party of its obligations under this Agreement as a result of acts of God; fires; floods; earthquake; strikes; labor disputes; regulation or order of civil or military authorities; adverse environmental conditions discovered on the Site; or other causes, similar or dissimilar, which are beyond the control of such Party. For avoidance of doubt, Force Majeure shall include unforeseen delays resulting from adverse environmental conditions that were discovered on the Site prior to Closing. Failure by the Developer to obtain funding for the Project shall not be considered to be Force Majeure.”

“Lodger’s Fee” means, to the extent that a hotel is located on the Site, the lodger’s fee that will be imposed by the Developer on the purchase of lodging services at such hotel located on the Site, at the rate of 3% of the purchase price paid or charged for purchasing such lodging services. The Lodger’s Fee may be imposed on the same lodging transactions that are subject to the lodging tax pursuant to the City’s lodging tax ordinance (Chapter 3.24 of the City’s Code of Ordinances), as amended from time to time, or on such other lodging transactions as determined by the City and the Developer.

b. The last paragraph of Section 13.2 set forth in the Second Amendment is hereby deleted in its entirety.

c. Section 13.3. Section 13.3, which was amended in accordance with the Second Amendment, is hereby further amended by the addition of the following paragraph at the end of such amended Section 13.3, as follows:

The District has executed and delivered the District Pledge Agreement dated April 26, 2017 in accordance with the terms and provisions of the preceding paragraph. The District shall enter into an amendment to the District Pledge Agreement incorporating the provisions required by Section 19.12(e) of the Third Amendment within thirty (30) days of the Closing Date. In the event that the District does not enter into such amendment within such period, the Developer agrees that it shall, within a reasonable period of time, impose additional operation and maintenance fees on other portions of the Project in an amount sufficient to offset any deficiency in operation and maintenance fee revenues resulting from the failure by the District to impose a mill levy in the amount required by Section 19.12(e). Notwithstanding the foregoing or any provisions to the contrary contained in the DRA, the execution and delivery of the amendment to the District Pledge Agreement as required by this paragraph shall not be a condition precedent to the City’s obligation to pay or reimburse the Developer for Eligible Costs pursuant to Section 14 hereof.

d. Section 19.12. Section 19.12 is hereby amended by the addition of a new paragraph (e) as follows:

19.12(e) To the extent that the amount of revenues generated from the imposition of 2% of the Lodger's Fee is less than \$78,000 in any year, then the District Pledge Agreement shall require the District to impose a 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 District Pledge Agreement shall further provide that any such revenues generated from the imposition of such mill levy shall be remitted to the City, or its designee, and applied to the operation and maintenance of the Parking Facility.

e. The second sentence of Section 21.5 shall be amended by including the underlined words hereinafter set forth as follows: "Unless waived in writing by the City Manager, the Developer shall submit its proposed financing for review and approval by the City Manager or his designee, which approval shall not be unreasonably withheld."

f. Section 28.15. Section 28.15 shall be amended and restated in its entirety as follows:

Section 28.15 Third-Party Beneficiaries. This Agreement is solely for the benefit of the Developer, the City and its respective members, principals, partners and successors and, except as hereinafter provided, no third party shall be entitled to the benefit of any of the provisions of this Agreement; provided, however, that (a) an Authorized Lender shall be deemed to be a third party beneficiary hereunder with respect to those provisions of this Agreement that grant specific rights to an Authorized Lender or impose specific duties on the City or the Developer for the benefit of an Authorized Lender, and (b) to the extent that Bonds are issued and outstanding, the Bond Trustee shall be deemed to be a third party beneficiary hereunder.

3. Ratification of DRA. The City hereby ratifies, approves and confirms the execution, delivery and due performance of the DRA, as amended by the First Amendment, the Second Amendment and this Third Amendment.

4. No Further Amendments and Agreements. Except as modified as set forth in the First Amendment, the Second Amendment, and in this Third Amendment, the DRA shall remain in full force and effect.


5. Counterparts. This Third 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 Third Amendment on the date set forth above.

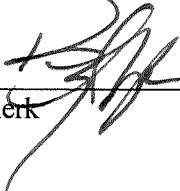
CITY:

CITY OF LOVELAND,  
a Colorado home rule municipality

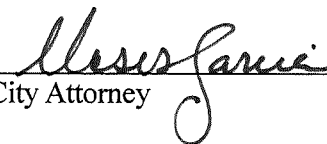
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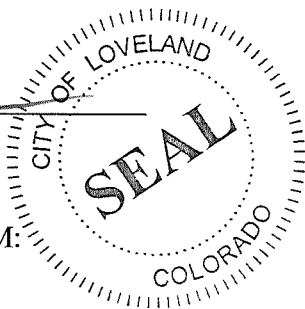
By:   
Stephen C. Adams, City Manager  
*Rad Wensink, Acting*

ATTEST:

*Acting*   
City Clerk

APPROVED AS TO FORM:

*Asst*   
City Attorney



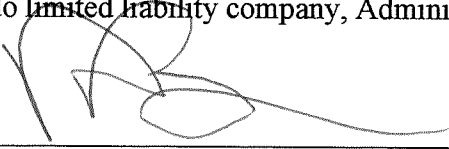
DEVELOPER:

THE FOUNDRY LOVELAND, LLC,  
a Colorado limited liability company,

By: GP FOUNDRY, LLC,  
a Colorado limited liability company, Manager

By: BRINKMAN ENTITY MANAGEMENT, LLC  
a Colorado limited liability company, Administrative Manager

By:

  
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Paul Brinkman, Manager