

A RESOLUTION APPROVING FIRST AMENDMENT TO AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT LOANING FUNDS FROM THE CITY OF COMMERCE CITY TO THE URBAN RENEWAL AUTHORITY OF THE CITY OF COMMERCE CITY FOR THE MILE HIGH GREYHOUND PARK URBAN RENEWAL PROJECT

RESOLUTION 2021-110

WHEREAS, the Urban Renewal Authority of the City of Commerce City (“Authority”) has undertaken to eliminate and prevent blight and to prevent injury to the public health, safety, morals, and welfare of the residents of the City of Commerce City, Colorado (“City”);

WHEREAS, the Authority is authorized pursuant to C.R.S. 31-25-105(l)(b) and C.R.S. 31-25-105(l)(h) to expend funds for urban renewal projects and, pursuant to C.R.S. 31-25-105(l)(g), to apply for and accept a loan from the City to enable the urban renewal projects;

WHEREAS, the City and the Authority were previously parties to various loans related to past activities undertaken by the Authority including acquisition of the former Mile High Greyhound Park property (“MHGP”), environmental abatement and demolition of the MHGP property, funding towards an affordable housing project, and other urban renewal activities and undertakings in furtherance of curing blight, all of which are detailed in City Council Resolution No. 2020-02;

WHEREAS, on January 6, 2020, the City and the Authority entered into the Amended and Restated Intergovernmental Agreement Loaning Funds from the City of Commerce to the Urban Renewal Authority of the City of Commerce City for the Mile High Greyhound Park Urban Renewal Project dated January 6, 2020 (the “Loan Agreement”), and the Amended and Restated Promissory Note, executed by the Authority in the original principal amount of \$13,531,590.00 (the “Note”, collectively with the Loan Agreement, the “Loan Documents”), which Loan Documents superseded, amended, and replaced all of the past loans and rolled them into one loan from the City to the Authority (the “Loan”);

WHEREAS, the Authority has requested and the City has agreed to extend the commencement date of the interest rate and repayment date of the Loan and to otherwise modify the terms of the Loan Documents on the terms and subject to the conditions set forth in the First Amendment to Amended and Restated Intergovernmental Agreement Loaning Funds from the City of Commerce to the Urban Renewal Authority of the City of Commerce City for the Mile High Greyhound Park Urban Renewal Project (the “First Amendment”); and

WHEREAS, the First Amendment is necessary for the redevelopment of the Mile High Greyhound Park and is expected to provide substantial direct and indirect benefits to the City, its citizens, and the surrounding region; to enhance the economic vitality of the City; and to eliminate blight and preventing injury to the public health, safety, morals, and welfare of the residents of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

Section 1. The foregoing Recitals are incorporated herein by this reference.

Section 2. The First Amendment, substantially in the form attached hereto as **Exhibit A**, and inclusive of the Second Amended and Restated Promissory Note, is hereby approved.

Section 3. The Mayor and the City Clerk are hereby authorized and directed to sign and attest to the First Amendment on behalf of the City.

Section 4. The City Manager or his designee is hereby authorized and directed to take all actions necessary for the City to comply with and effectuate the First Amendment and Loan Documents, including any actions identified in the First Amendment or the Loan Documents or any exhibit thereto that are not specifically designated as requiring review, approval, or decision by the City Council or required by law to be performed by the City Council.

RESOLVED AND PASSED THIS 20TH DAY OF DECEMBER 2021.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk

EXHIBIT A TO RESOLUTION

**FIRST AMENDMENT TO AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT LOANING FUNDS**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT LOANING FUNDS FROM THE CITY OF COMMERCE CITY TO THE URBAN RENEWAL AUTHORITY OF THE CITY OF COMMERCE CITY FOR THE MILE HIGH GREYHOUND PARK URBAN RENEWAL PROJECT (this "First Amendment") is executed effective as of _____ (the "First Amendment Effective Date"), by and between the CITY OF COMMERCE CITY, COLORADO, a home rule municipality ("City") and the URBAN RENEWAL AUTHORITY OF THE CITY OF COMMERCE CITY ("Authority").

RECITALS

A. The City extended a loan to the Authority in the original principal amount of \$13,531,590.00 (the "Loan"), which is evidenced by, among other things: (i) Amended and Restated Intergovernmental Agreement Loaning Funds from the City of Commerce to the Urban Renewal Authority of the City of Commerce City for the Mile High Greyhound Park Urban Renewal Project dated January 6, 2020 (the "Loan Agreement"), and (ii) Amended and Restated Promissory Note dated January 6, 2020, executed by the Authority in the original principal amount of \$13,531,590.00 (the "Note").

B. The Loan Agreement and Note and any and all other documents or writings that evidence and/or secure the Loan, as amended, modified or supplemented from time to time, are collectively referred to herein as the "Loan Documents." Capitalized terms not defined herein shall have the meanings ascribed to them in the Loan Documents, as applicable.

C. The Authority has requested and the City has agreed to extend the commencement date of the interest rate and repayment date of the Loan and Note and to otherwise modify the terms of the Loan Documents on the terms and subject to the conditions set forth in this First Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree to amend the Loan Documents as follows:

**ARTICLE I
AMENDMENTS**

Effective as of the First Amendment Effective Date, the Loan Documents are hereby amended and supplemented as follows:

1.1 **Interest Rate.** Article I.B. of the Loan Agreement shall be deleted and shall be amended to state:

“B. Interest Rate. The Loan Amount will accrue interest on the unpaid principal balance at the rate of four percent (4%) per annum (“Interest”). Interest shall accrue beginning on the date that the Authority has sufficient funds to make an annual installment payment and those funds are not committed to another Authority priority via agreement or bonds. No interest shall be deemed to have accrued under the Loan Agreement prior to the First Amendment Effective Date.”

1.2 **Repayment.** Article I.C. of the Loan Agreement shall be deleted and shall be amended to state:

“C. Repayment. The Authority will repay the Loan Amount in ten (10) equal annual installments, plus accrued Interest as of the date each installment is due and payable. The Loan Amount will be due and payable beginning on the date that the Authority has sufficient funds to make an annual installment payment and those funds are not committed to another Authority priority via agreement or bonds. The Authority may repay the Loan Amount and Interest at any time and without penalty.”

1.3 **Promissory Note.** The Authority will execute the Second Amended & Restated Promissory Note attached hereto as Exhibit A which is intended to supersede and replace the prior Note which will be destroyed.

ARTICLE II RATIFICATION, WAIVER AND RELEASE

2.1 **Survival of Representations and Warranties.** All representations and warranties made in the Loan Agreement and other Loan Documents, including, without limitation, any document furnished in connection with this First Amendment, shall survive the execution and delivery of this First Amendment and the Loan Documents, and no investigation by the City shall affect the representations and warranties or the right of the City to rely upon them.

2.2 **Ratification.** The Loan Agreement, as amended hereby, and all other Loan Documents, as amended hereby, and all other documents executed in connection with any of the foregoing, are hereby ratified, confirmed and approved in all respects, and the Authority does hereby represent and warrant that no Event of Default now exists.

2.3 **No Waiver.** Nothing contained in this First Amendment shall be construed as a waiver by the City of any covenant or provision of the Loan Agreement, the Loan Documents, this First Amendment, or of any other contract or instrument between the City and the Authority, and the failure of the City at any time or times hereafter to require strict performance by the Authority of any provision thereof shall not waive, affect or diminish any right of the City to thereafter demand strict compliance therewith. The City hereby reserves all rights granted under the Loan Agreement, the Loan Documents, this First Amendment and any other contract or instrument between any of them.

2.4 **Release.** The Authority hereby acknowledges and agrees that it has no defense, counterclaim, offset, cross complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of its liability to repay the Loan or to seek affirmative

relief or damages of any kind or nature from the City as of the date of this First Amendment. The Authority hereby voluntarily and knowingly releases and forever discharges the City, its successors, assigns, agents and employees from all demands, claims, causes of actions, damages, costs, expenses and liabilities, known or unknown, fixed or contingent, at law or in equity which the Authority may now have against the City.

ARTICLE III MISCELLANEOUS

3.1 **Modification.** Except as amended by this First Amendment, no term or condition of the Loan Agreement or applicable Loan Document shall be modified and the Loan Documents shall remain in full force and effect and shall be incorporated herein; provided, however, if any provision of this First Amendment is in conflict with, or inconsistent with, any provision in the Loan Agreement or applicable Loan Document, then the provision contained in this First Amendment shall govern and control.

3.2 **Successors and Assigns.** This First Amendment shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of the parties hereto.

3.3 **Severability.** If any portion of this First Amendment as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this First Amendment and shall in no way effect the validity or enforceability of the remaining portions of this First Amendment or the Loan Agreement.

3.4 **Applicable Law.** This First Amendment and all other documents or agreements executed pursuant hereto shall be governed by and construed in accordance with the laws of the State of Colorado.

3.5 **Further Assurances.** The Authority shall execute and deliver to the City from time to time, upon demand, such supplemental agreements, documents, statements, assignments, transfers, or such other instruments as the City may reasonably request, in order that the full intent of the Loan Documents and this First Amendment may be carried into effect.

3.6 **Counterparts.** This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have caused this First Amendment to be executed as of the First Amendment Effective Date.

CITY OF COMMERCE CITY

Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

**URBAN RENEWAL AUTHORITY OF THE
CITY OF COMMERCE CITY**

Chairperson

ATTEST:

Secretary

Approved as to form:

Caitlin Quander, Special Counsel

EXHIBIT A

Second Amended Restated Promissory Note

**SECOND
AMENDED AND RESTATED PROMISSORY NOTE**

\$13,531,590.00
December 20, 2021

For value received, the undersigned Urban Renewal Authority of the City of Commerce City, Colorado, an urban renewal authority organized and existing under and by virtue of the laws of the State of Colorado (“Maker”) whose address is 7887 E. 60th Avenue, Commerce City, Colorado 80022, promises to pay to the order of City of Commerce City, Colorado, a municipal corporation (“Note Holder”) at 7887 E. 60th Avenue, Commerce City, Colorado 80022, or such other place as Note Holder shall designate in writing in lawful money of the United States of America the principal sum of Thirteen Million Five Hundred and Thirty-One Thousand Five Hundred and Ninety Dollars and Zero Cents (\$13,531,590.00) (“Loan Amount”) with interest as set forth below. All amounts due and owing hereunder shall be due and payable in equal annual installments extending over a ten-year period beginning on the date that the Maker has sufficient funds to make an annual installment payment and those funds are not committed to another Note Holder priority via agreement or bonds. The Maker may repay the Loan Amount and Interest at any time and without penalty.

1. Loan and Loan Documents. This promissory note (“Note”) evidences a certain loan from Note Holder to Maker made pursuant to the January 6, 2020 Amended and Restated Intergovernmental Agreement Loaning Funds from the City of Commerce City to the Urban Renewal Authority of the City of Commerce City for the Mile High Greyhound Park Urban Renewal Project between Note Holder and Maker, as amended by that certain First Amendment dated December 20, 2021, to finance the purchase and redevelopment of the former Mile High Greyhound Park (as amended, the “Loan Agreement”). This Note and the Loan Agreement shall be together referred to herein as the “Loan Documents”. All conditions, covenants and agreements contained in the Loan Agreement shall be applicable to this Note.
2. Payment of Principal and Interest. The outstanding principal and interest shall be payable to Note Holder at the address designated above and the obligation to make such payments shall continue until the entire indebtedness evidenced by this Note is fully paid as provided above.
3. Interest. Interest on the unpaid principal balance at the rate of four percent (4%) per annum shall begin to accrue on the date that the Maker has sufficient funds to make an annual installment payment and those funds are not committed to another Maker priority via agreement or bonds. No interest shall be deemed to have accrued under the Loan Agreement prior to the date of the First Amendment to the Loan Agreement.
4. Application of Payments. All payments received by Note Holder on this Note shall be applied first to the payment of costs and expenses of collection, if any, second to accrued interest, and third to reduction of the remaining outstanding principal balance.
5. Default. Upon the occurrence of a default, Note Holder shall have all rights and remedies available at law and in equity. The Note Holder shall additionally be entitled

to collect all reasonable costs and expenses of collection including, but not limited to, reasonable attorney's fees.

6. Waiver of Presentment. Maker hereby waives presentment, notice of dishonor and protest and hereby agrees to any extensions of time of payment and partial payments before, at or after maturity.
7. Governing Law. As additional consideration for the extension of credit, Maker understands and agrees that the Loan evidenced by this Note is made in the State of Colorado and the provisions hereof will be construed in accordance with the laws of the State of Colorado, except to the extent that any of such laws may now or hereafter be preempted by federal law, in which case, such federal law shall so govern and be controlling; and Maker further agrees that this Note may be enforced in the District Court for the Seventeenth Judicial District for the State of Colorado, and it does hereby submit to the jurisdiction of such court.
8. Notice. Whenever any notice is required or permitted to be made hereunder, it shall be deemed given when personally delivered or deposited in the United States mail, certified, return receipt requested. Notices to the City shall be to the City Manager, with a copy to the City Attorney. Notices to the Maker shall be to the Authority's Executive Director, with a copy to the Authority's General Counsel.
9. Miscellaneous:
 - a. Severability. If any provision of this Note or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Agreement, which can be given effect without the invalid provision or application consistent with the intent of the Parties.
 - b. No Deductions or Setoffs. This Note and each payment of principal and interest hereunder shall be paid when due without deduction or setoff of any kind or nature or for any costs whatsoever, except as may be agreed upon in writing by Note Holder.
 - c. Amendment. This Note may not be amended orally, but only by an amendment in writing signed by Note Holder and Maker.
 - d. Number. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and vice versa.
 - e. Assignability. Note Holder may assign or transfer its rights and obligations hereunder at any time, upon written notice to Maker. Maker may not assign or transfer any of its rights or obligations hereunder without prior written consent of the Note Holder.
 - f. Waiver. No failure by either party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, to exercise any right or

remedy as a consequence of a breach of this Agreement, shall constitute a waiver of any such breach or any covenant, agreement, term, or condition.

[Signature Page Follows]

IN WITNESS WHEREOF, Maker has executed this Second Amended & Restated Promissory Note as of the day and year first above written.

MAKER:

URBAN RENEWAL AUTHORITY OF THE
CITY OF COMMERCE CITY

BY: _____
Benjamin A. Huseman, Chairperson

ATTEST:

Authority Secretary

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing Second Amended & Restated Promissory Note was acknowledged before me this _____ day of _____, 2021, by Benjamin A. Huseman as Chairperson and _____ as Secretary of the Urban Renewal Authority of the City of Commerce City.

Notary Public

My commission expires: _____