

**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 Agreement (“Agreement”) is made and entered into effective this January 6, 2020 (“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”).

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 are parties to that 2011 Intergovernmental Agreement between the City of Commerce City and the Urban Renewal Authority of the City of Commerce City, dated August 1, 2011 (“2011 IGA”) and a related promissory note dated August 1, 2011 (“2011 Promissory Note”) by which the City agreed to loan to the Authority, and the Authority agreed to repay, \$4 million to allow the Authority to purchase the former Mile High Greyhound Park property at 6200 and 6210 Dahlia Street, Commerce City, Colorado (“MHGP”) as part of an urban renewal project and to fund other authorized uses;

WHEREAS, the City and the Authority are parties to that 2012 Intergovernmental Agreement between the City of Commerce City and the Urban Renewal Authority of the City of Commerce City, dated July 2, 2012 (“2012 IGA”) and a related promissory note dated July 2, 2012 (“2012 Promissory Note”) by which the City agreed to loan to the Authority, and the Authority agreed to repay, \$2.5 million to allow the Authority to conduct environmental abatement, demolish structures located at MHGP, and other authorized uses as part of an urban renewal project;

WHEREAS, the City and the Authority amended the 2012 IGA and the 2012 Promissory Note by a First Amendment dated March 3, 2014 (“First Amendment”), by which the City agreed to loan to the Authority, and the Authority agreed to repay, an additional \$250,000 to allow the Authority to conduct environmental abatement, demolish structures located at MHGP, and other authorized uses as part of an urban renewal project;

WHEREAS, the City and the Authority further authorized an amendment to the 2012 IGA and the 2012 Promissory Note by a Second Amendment approved by the City Council by Resolution 2016-18 on February 1, 2016, and by the Authority by Resolution URA 2016-03 on February 1, 2016 (“Second Amendment”), by which the City agreed to loan to the Authority, and the Authority agreed to repay, an additional \$100,000 to allow the Authority to conduct environmental abatement, demolish structures located at MHGP, and other authorized uses as part of an urban renewal project, but no record of an executed Second Amendment can be located;

WHEREAS, the Mile High Greyhound Park Urban Renewal Plan was approved on June 18, 2018 (“Plan”), and, effective June 17, 2019, the following agreements were entered into to further the MHGP urban renewal project: (a) an Amended and Restated Phased Redevelopment Agreement between the Authority and Greyhound Park LLC (“Redevelopment Agreement”) to establish the terms under which Greyhound Park LLC will develop the Property as master

developer; (b) a Purchase and Sale Agreement between the City, the Authority and Greyhound Park LLC (“Purchase and Sale Agreement”), to establish, among other things, the terms for the purchase and sale of a portion of the MHGP to Greyhound Park LLC, the contribution of the City to a stormwater detention facility, Greyhound Park LLC’s contribution of funds to complete the infrastructure improvements for the Property, and the satisfaction of the terms of the intergovernmental agreements between the Authority and the Adams 14 School District and Adams County relating to the use of property tax increment revenue; and (c) an Owner’s Representative Services Agreement between the Authority and Real Estate Generation, LLC (“Owner’s Representative Services Agreement”) to establish, among other things, the terms to resolve any rights or claims of Real Estate Generation, LLC under a prior development agreement; and

WHEREAS, the parties desire to supersede, amend, and replace the 2011 IGA and the 2011 Promissory Note and the 2012 IGA and the 2012 Promissory Note, as each has been amended, to clarify certain matters, to confirm the Second Amendment, and to increase the loan amount and repayment obligation in the amount of \$6,681,590 for the purposes of allowing the Authority to make contributions toward affordable housing, if necessary, as provided for in the Purchase and Sale Agreement, to complete a payment obligation as provided for in the Owner’s Representative Services Agreement, and to fund the regional stormwater pond on behalf of the City, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is expressly acknowledged, the parties hereby agree as follows:

I. Loan Terms.

A. Loan. The City will loan \$13,531,590.00 (“Loan Amount”) to the Authority for the following purposes related to the redevelopment of the MHGP as an urban renewal project, as defined in the Plan, as it may be amended, including the following purposes and such other uses authorized by the Authority’s Executive Director to support the activities of the Authority (“Loan”):

1. \$4,000,000.00 for the purchase of the MHGP and other authorized uses in support of the Authority;
2. \$2,850,000.00 for the environmental abatement and demolition of structures on the MHGP and other authorized uses in support of the Authority;
3. \$3,750,000.00 for the use by the Authority as “Affordable Housing Funds,” as defined and intended in the Purchase and Sale Agreement, as it may be amended;
4. \$431,590.00 for use by the Authority as the “Lump Sum Payment,” as defined and intended in the Owner’s Representative Services Agreement; and
5. \$2,500,000.00 for use by the Authority, on behalf of the City, as funding for the “Regional Storm Water Facility,” as defined and intended in the Purchase and Sale Agreement, as it may be amended.

The parties acknowledge that the Loan Amount has been provided by the City to the Authority as of the Effective Date. The Authority will use the Loan amount solely for the purposes authorized by this Agreement. In consideration for the deferment of interest from the 2011 IGA and 2012 IGA and renegotiation of the terms of repayment, and other consideration, the Authority will utilize Loan funds to make the payment for the Regional Storm Water Facility to satisfy the City's obligation for such facility, as defined and intended in the Purchase and Sale Agreement, as it may be amended.

B. Interest Rate. The Loan Amount will accrue interest on the unpaid balance at the rate of four percent (4%) per annum ("Interest"). Interest shall accrue beginning as of the earlier of: (1) the issuance of the first building permit on the MHGP after the Effective Date; or (2) one (1) year from the Effective Date. No interest shall be deemed to have accrued under the 2011 IGA or the 2012 IGA prior to the Effective Date.

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 as of the earlier of: (1) the issuance of the first building permit on the MHGP after the Effective Date; or (2) two (2) years from the Effective Date. The Authority may repay the Loan Amount and Interest at any time and without penalty.

D. Promissory Note. The Loan shall be evidenced by a promissory note ("Note") executed by the Authority substantially in the form attached as Exhibit "A."

II. General Provisions

A. Effect. The 2012 IGA and the 2012 Promissory Note, as amended, and the 2011 IGA and the 2011 Promissory Note are superseded and replaced by this Agreement. The 2011 Promissory Note and 2012 Promissory Note shall be canceled upon execution of this Agreement and the Authority's execution and delivery of the Note.

B. Amendments. This Agreement and the Note contain all terms agreed upon by the Parties. Any amendments or modifications of this Agreement shall be reduced to writing and executed by the Parties in order to be valid and binding.

C. Severability. If any provision of this Agreement 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.

D. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

E. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Authority, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person on this Agreement. The parties expressly intend that any person other than the City or the Authority receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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.

G. Notices. 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 Authority shall be to the Authority's Executive Director, with a copy to the Authority's General Counsel.

H. Assignability. Except as provided in the Note, no Party may assign or transfer any of its rights or obligations under this Agreement without prior written consent of the other Party.

I. Binding Effect. The provisions of this Agreement and the Note shall bind and shall inure to the benefit of the Parties and to their respective successors and permitted assigns, if any.

J. Nonliability of Officials or Employees. No councilmember, board member, official, employee, agent, or consultant of the City or the Authority shall be personally liable for any obligation of this Agreement or the Note or any breach thereof.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the Effective Date.

CITY OF COMMERCE CITY

Benjamin A. Huseman, Mayor

ATTEST:

Laura J. Bauer, MMC, City Clerk

Approved as to form:

Robert Sheesley, City Attorney

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

Benjamin A. Huseman, Chairperson

ATTEST:

Laura J. Bauer, MMC, Secretary

Approved as to form:

Caitlin Quander, Special Counsel

AMENDED AND RESTATED PROMISSORY NOTE

\$13,531,590.00

January ____, 2020

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 commencing the earlier of: (1) the issuance of the first building permit on the MHGP after the Effective Date; or (2) two (2) years from the Effective Date.

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 to finance the purchase and redevelopment of the former Mile High Greyhound Park ("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 shall accrue on the unpaid principal balance at the rate of four percent (4%) per annum computed on the outstanding and unpaid portion of the Loan Amount from of the earlier of: (1) the issuance of the first building permit on the MHGP after the Effective Date; or (2) one (1) year from the Effective Date.
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 Authority 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.
 - A. 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.

IN WITNESS WHEREOF, Maker has executed this 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:

Laura J. Bauer, Secretary

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing Promissory Note was acknowledged before me this _____ day of _____, 2020, by Benjamin A. Huseman as Chairperson and Laura J. Bauer as Secretary of the Urban Renewal Authority of the City of Commerce City.

Notary Public

My commission expires: _____