

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "IGA") is dated _____ 2020 (the "Effective Date") between HOUSING AUTHORITY OF THE COUNTY OF BOULDER, COLORADO, a public body, corporate and politic, doing business as Boulder County Housing Authority, with an address of P.O. Box 471, Boulder, CO 80306 ("BCHA") and the LONGMONT DOWNTOWN DEVELOPMENT AUTHORITY, a Colorado downtown development authority, with an address of [_____] (the "Tenant"). BCHA and Tenant are each a "Party," and collectively "Parties."

Recitals

A. BCHA and Tenant are parties to the Garage Construction Agreement effective [_____] 2020, pursuant to which BCHA agreed to construct a shared parking garage on the 500 block of Coffman Street in Longmont, Colorado.

B. Consistent with its obligations under the Garage Construction Agreement, on [_____] 2020 BCHA, acting as declarant, subjected the property legally described as Lot 1, Coffman Place, Minor Subdivision, City of Longmont, County of Boulder, State of Colorado to that certain Planned Community Declaration recorded [_____] 2020, in the office of the Clerk and Recorder of the County of Boulder, Colorado, at Reception No. [_____] (as amended from time to time, the "Declaration") and the Planned Community Map for [Coffman Project] recorded [_____] 2020, in such office at Reception No. [_____] thereby forming the "Small Planned Community."

C. BCHA is or will be the fee simple owner of the unit in the Small Planned Community known as the Garage Unit, which includes all of the parking spaces in the shared parking garage (the "Garage").

D. BCHA will lease to Tenant the number of parking spaces described below ("Parking Spaces") for parking use by Tenant and its employees, invitees, licensees, or agents (each a "Tenant Party").

NOW, THEREFORE, in consideration of the payment of the Rent and the performance of the promises by Tenant set forth below, BCHA leases to Tenant, and Tenant accepts, the Parking Premises subject to the terms and conditions of this IGA.

1. Lease of Parking Premises.

(a) BCHA leases the Parking Spaces to Tenant, 24 hours a day, 7 days a week, subject only to closures caused by casualty, or condemnation, or otherwise beyond BCHA's reasonable control (the "Parking Hours").

(b) BCHA also grants Tenant an irrevocable, nonexclusive easement for access to those portions of the Garage necessary for Tenant Parties to access and park their motor vehicles in the Garage (the "Common Areas" and, together with the Parking Spaces, the "Parking Premises"). Tenant will abide by all reasonable rules and regulations pertaining to the Parking Premises (the "Rules").

(c) The Parking Spaces will total 70 spaces, with access to electric vehicle and Americans with Disabilities Act (“ADA”)-compliant spaces shared by all Garage users.

(d) BCHA may operate the Garage as a “self-park and lock” service or as otherwise determined by BCHA in its reasonable discretion. The pathways, access ways, circulation patterns, signage, lighting, and striping within the Garage may change from time to time, as long as such modifications do not adversely affect the use of the Parking Premises by Tenant Parties.

2. **Term.** The term of this IGA (the “Term”) will begin when BCHA has obtained a final certificate of occupancy allowing operation of the Garage (the “Commencement Date”) and will expire as of [11:59 p.m. on December 31, 2119] (the “Expiration Date”). If the Garage Construction Agreement is terminated prior to issuance of a certificate of occupancy (or the functional equivalent) for the Garage by the City of Longmont, this IGA will terminate automatically with no further action required by any Party.

3. **Permitted Use.**

(a) Tenant Parties may use the Parking Premises solely for the parking of motor vehicles (the “Permitted Use”). The Tenant Parties will have unrestricted use of the Garage during the Parking Hours, subject to the terms of this IGA and the Rules. The Tenant Parties use of the Parking Premises will be on a transient or daily basis. Tenant Parties may not use the Parking Premises for long-term parking or long-term vehicle storage.

(b) Tenant may erect a sign or signs upon the Parking Premises, provided all signage is in compliance with size and other requirements of applicable ordinances and regulations. All signage must conform to aesthetic and design criteria, themes, and standards of the Garage.

(c) Tenant may charge fees for the right to park in its designated spaces, including, but not limited to selling parking permits and charging for hourly parking. In addition, Tenant may monitor and enforce time limits within its designated spaces.

(d) All Boulder County designated parking spaces will be open to the public between the hours of 5:00 PM and 7:00 AM to the extent not required for residential use consistent with the City of Longmont zoning requirements and when not otherwise in use by Boulder County vehicles.

(e) Tenant Parties must comply with all applicable laws in connection with the occupancy and use of the Parking Premises. No hazardous or dangerous activities are permitted upon the Parking Premises.

(f) No Tenant Party may act in any manner that would interfere with, be a nuisance to, other subtenants, occupants, invitees of the Parking Premises, adjacent property owners, or adjacent tenants, or that would interfere with those other parties’ quiet enjoyment of their premises. This prohibition includes loud noises, loud music, noxious or unpleasant odors, and disruptive behavior or actions. Tenant may not permit any portion of the Parking Premises to be used in a manner that may endanger the person or property of BCHA, other tenants, or any person living, working, or present on or near the Parking Premises. Tenant must keep all portions of the Parking Premises in a clean, safe, sanitary, and habitable condition.

(g) Tenant may contract with the City of Longmont or a third-party vendor to enforce any permit or parking time restrictions imposed by the Tenant on Tenant’s Parking Spaces, in accordance with the terms of this IGA.

4. **BCHA's Compliance with Laws.** BCHA, at its expense, must comply with all legal requirements in effect applicable to the Garage, and must maintain and operate the Garage in compliance with all such legal requirements so as not to impede or otherwise jeopardize the Tenant Parties' ability to use the Parking Premises for the Permitted Use.

5. **BCHA's Maintenance and Operation of Garage.** At its sole cost and expense, BCHA will maintain and operate the Garage in a first-class manner, consistent with how a shared parking garage located in downtown Longmont, Colorado would be operated by an entity that is a branded third-party operator of such garages. BCHA will use reasonable efforts to minimize any disruption or interference with Tenant's use of the Parking Premises for the Permitted Use. BCHA may inspect and monitor the Parking Premises and Tenant's use of the Parking Premises in order to confirm Tenant's compliance with this IGA.

6. **Warranty Disclaimer.** Tenant has assured itself that the Parking Premises are suitable for its use, and such use is permitted by applicable law. Other than as expressly set forth in this IGA, the Parking Premises are provided "as is" "where is" and "with all faults" and neither BCHA, its affiliates, nor their respective elected and appointed officials, officers, directors, employees, agents or representatives make any express or implied warranty, condition or representation with respect to the Parking Premises. Taking possession of the Parking Premises by Tenant will be conclusive evidence that the Parking Premises were in satisfactory condition when possession was taken. Tenant may make a final walk-through inspection of the Parking Premises prior to taking possession.

7. **Assignment/Subletting.** Tenant may assign some or all its rights and obligations under this IGA or sublease Tenant's interest in any Parking Space (each a "Transfer"), without the prior written consent of BCHA as long as (a) any Transfer will not release Tenant of its obligations under this IGA; (b) the transferee acknowledges its obligations under this IGA in writing; and (c) Tenant may not profit from a Transfer. However, Tenant shall be permitted to assign this IGA to the City of Longmont, as its successor, at any point during the Term of this IGA, without the prior written consent of BCHA. Under such circumstances, Tenant shall provide BCHA prior written notice to of Tenant's intent to assign this IGA to the City of Longmont.

8. **Rent.** The fixed monthly rent ("Rent") equals the number of Parking Spaces multiplied by ~~†\$1.00†~~. The term "Rent" also includes Additional Rent and all other charges or amounts payable by Tenant under this IGA. Tenant may not withhold or set off any Rent due to BCHA. Beginning with the Commencement Date and then on a monthly basis, BCHA will invoice Tenant for Rent and Tenant will pay Rent within [30] business days after receipt of invoice. BCHA will coordinate in good faith with Tenant and Boulder County to determine whether the development contemplated by this IGA and the Garage Construction Agreement is considered a joint project by Boulder County, so that Tenant may receive 100% of the existing TIF increment and use such increment to pay amounts owed by Tenant under this Lease.

9. **Utilities; CAM; Insurance; Sinking Fund.** Tenant will pay its pro rata share of all items in this Section each month (collectively, the "Additional Rent"). "Tenant's Pro Rata Share" is 26.7%, which is a fraction, the numerator of which is the number of Parking Spaces and the denominator of which is the total number of parking spaces in the Garage.

(a) [The Garage has a single meter for the following utilities: Electric Gas Water Sewer Refuse Disposal Other: [_____]] (the

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“Utilities”).^{1]} Tenant will be responsible for paying its Pro Rata Share of the Utilities to BCHA each month as Additional Rent.

(b) Tenant will pay its Pro Rata Share of the operation and maintenance costs of the Garage (“CAM Costs”). CAM Costs are all costs incurred by BCHA to operate and maintain the Common Areas and other portions of the Parking Premises to the extent not paid by Tenant or other tenants of the Parking Premises directly, including maintenance; repairs; and replacement costs; trash and snow/ice removal; landscaping and lawn maintenance; painting; sign installation, repair, maintenance, and replacement of utility systems; depreciation of machinery and equipment used in such repair, maintenance, and replacement; and the cost of all personnel to implement such services. This list of items is provided for illustrative purposes only and is not a full, complete, or exhaustive list of all possible CAM Costs.

(c) Tenant must pay its Pro Rata Share of the costs of any insurance obtained by BCHA to benefit the Parking Premises.

(d) Tenant must pay its Pro Rata Share of the costs of a sinking fund for future Garage capital needs, sized according to BCHA’s calculation in its reasonable discretion and subject to prior written consent of Tenant, not to be unreasonably withheld.

10. **Tax Exempt.** Tenant is exempt from payment of Federal, State, and local government taxes. BCHA will not collect tax from Tenant, and Tenant will not be liable to pay any taxes imposed on BCHA.

11. **Payment of Additional Rent.** Tenant will pay all Additional Rent to BCHA in equal monthly installments concurrent with the Rent.

12. **Financial Obligations.** Tenant is a “district” as defined by Article X, Sec. 20 of the Colorado Constitution (“TABOR”) and is, therefore, subject to TABOR’s terms. In accordance with TABOR, all financial obligations of Tenant in this Lease are expressly made subject to annual appropriation and budgeting for the discharge of those particular financial obligations. As such, this Lease shall not be considered a multiple fiscal year financial obligation or pledge of credit of the Tenant.

13. **Insurance.** Each Party is a “public entity” under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. (“Governmental Immunity Act”), as amended, and will maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. This insurance will have minimum limits, which will match or exceed the maximum governmental liability limits set forth in C.R.S. § 24-10-114, as amended.

14. **Liability.** Each Party is responsible for its own actions or omissions, and those of its officers, agents and employees in the performance or failure to perform its obligations under this IGA.

15. **Default.** Any Party’s failure to perform any of its material obligations under this IGA, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against a Party, or the appointment of a receiver or similar officer for Party or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also

¹ Needs confirmed by design team.

constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the breaching Party does not cure the breach, at its sole expense, as reasonably determined by the non-breaching Party in its sole discretion, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Contract or at law, including immediate termination of this Contract.

16. **Continuing Effectiveness: Basic Conditions.** Anything in this IGA to the contrary notwithstanding, the continuing effectiveness of this IGA as against BCHA is subject to the following express conditions subsequent, each of which may be satisfied or waived, if at all, in BCHA's sole and absolute discretion, in writing delivered to Tenant by BCHA:

(a) BCHA must have acquired fee simple title to the Garage on or before the Commencement Date;

(b) BCHA or the General Contractor (as defined in the construction contract between BCHA and its general contractor (the "Construction Contract")) must have obtained any necessary permits or other approvals (including building permits and zoning approvals) from the applicable governmental authorities or agencies, and any other necessary party, for the completion of the construction of the Garage (the "Project"), on or before 60 business days after the date of the Guaranteed Maximum Price Amendment to the Construction Contract (the "GMP Date");

(c) BCHA must have closed its construction financing for the Project on or before 60 business days after the GMP Date;

(d) BCHA must have approved, in its sole and absolute discretion, the Construction Contract on or before the GMP Date;

(e) BCHA must have approved, in its sole and absolute discretion, the Guaranteed Maximum Price Amendment to the Construction Contract on or before [July 31], 2020;

(f) The cost of completing the design and construction of the Project, as actually incurred or as reasonably estimated by the General Contractor, remains equal to or less than the Contract Sum (as defined in the Construction Contract) subject to any adjustments to the Contract Sum pursuant to the pre-construction change order or any other change order approved by BCHA in its sole and absolute discretion on or before the date by which Substantial Completion of the Project is achieved; and

(g) The Garage Construction Agreement remains in effect from its commencement date up to and including the date a certificate of occupancy (or its functional equivalent) for the Garage is issued by the City of Longmont.

If any one or more of the conditions set forth in this Section is unsatisfied or unwaived by the applicable deadline, BCHA may, by delivery of written notice to Tenant at any time prior to the satisfaction of the applicable condition, cancel this IGA without further obligation or liability. If BCHA fails to deliver notice of satisfaction or waiver of any condition to Tenant by the applicable deadline specified above, then such condition will be deemed unsatisfied and BCHA will be deemed to have cancelled this IGA in accordance herewith.

17. **Surrender of Parking Premises.** At the expiration of the Term or earlier termination of this IGA, Tenant will peaceably surrender, without notice or demand, the Parking Premises in substantially the same condition and repair as the Parking Premises were in as of the Commencement Date, loss by casualty, condemnation, and normal wear and tear excepted.
18. **Holding Over.** Tenant must vacate the Parking Premises and remove all of Tenant's personal property from the Parking Premises prior to 11:59 p.m. on the date the Term expires.
19. **Limitation of Liability:** NO PARTY WILL BE LIABLE TO ANY OTHER PARTY FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS IGA, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S AGGREGATE LIABILITY, IF ANY, RELATED TO THIS IGA, WHETHER IN CONTRACT, OR IN TORT, OR OTHERWISE, IS LIMITED TO, THE AMOUNTS PAID OR PAYABLE HEREUNDER BY TENANT TO BCHA.
20. **Notices.** All notices provided under this IGA must be in writing and sent by Certified U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the other Party's contact at the address specified above. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.
21. **Force Majeure.** In the event that BCHA or Tenant is delayed or hindered in or prevented from the performance of any act required by this IGA (other than the payment of Rent or other monetary obligation) by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, pandemic, war, or other reason of a like nature not the fault of BCHA or Tenant (as applicable), then the time allowed for performance for such act will be extended by a period equivalent to the period of such delay.
22. **No Partnership.** No Party, in any way or for any purpose, becomes a partner of any other Party in the conduct of its business or otherwise, or joint adventurer or a member of a joint enterprise with any other Party, as a result of this IGA.
23. **Further Assurances.** At any time and from time to time, the parties will execute and deliver to the other such further instruments and documents, and take such further actions, as are necessary to effectuate the purposes of this IGA.
24. **Parties Bound.** This IGA will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
25. **Governmental Immunity.** All Parties are entitled to immunity protection under the Governmental Immunity Act, and nothing in this IGA will be construed as a waiver of that immunity protection.
26. **Interpretation.** The provisions of this IGA will be construed as to their fair meaning, and no inference in favor of or against any party will be drawn from the fact that such party has drafted any part of this IGA.
27. **Governing Law.** This IGA and its performance and enforcement will be governed, interpreted, construed and regulated by Colorado law, without giving effect to conflict of law principles.

28. **Colorado Open Records Act**: Either Party may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq.

29. **Third-Party Beneficiary**. Enforcement of the terms and conditions and all rights and obligations of this IGA are reserved to the Parties. Any other party receiving services or benefits under this IGA is an incidental beneficiary only and has no rights under this IGA.

30. **Counterparts; Electronic Signatures**. This IGA may be executed in one or more counterparts, each of which will be deemed original, but all of which together will constitute one and the same instrument. The parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101 et seq. The Parties will not deny the legal effect or enforceability of this IGA solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this IGA in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

31. **Severability**. If any provision of this IGA becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the IGA will continue to be operative and binding on the Parties.

32. **Entire Agreement; Amendments**. This IGA embodies the entire agreement between the Parties with respect to the subject matter hereof and may not be modified or terminated except by written agreement between the Parties. This IGA will be binding and effective as of the Effective Date, subject to the conditions and contingencies set forth in Section 15; but Tenant will not have access to the Parking Premises at any time prior to the Commencement Date without BCHA's prior written consent.

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The parties hereto have set their hands and seals as of the Effective Date set forth above.

HOUSING AUTHORITY OF THE
COUNTY OF BOULDER,
COLORADO, a public body,
corporate and politic, doing business
as Boulder County Housing Authority

By:
Name:
Title:

LONGMONT DOWNTOWN
DEVELOPMENT AUTHORITY, a Colorado
downtown development authority

By:
Name:
Title:

