

## AMENDATORY AGREEMENT

This **AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **48RACE LLC**, a Colorado limited liability company, whose address is 1600 Downing Street, Suite 300, Denver, Colorado 80218 (the “Borrower or Contractor”), jointly (“the Parties”).

### WITNESSETH:

**A.** The Parties entered into that certain Loan Agreement dated March 18, 2015 (the “Loan Agreement”).

**B.** The Parties wish to amend the Loan Agreement to modify the terms and conditions as set forth herein.

**NOW THEREFORE**, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

**1.** Section 1(C) of the Lon Agreement is amended to read as follows:

“C. Any outstanding portion of the Loan, including any interest that has accrued with respect to the Second Loan Amount, shall be due and payable on the Maturity Date; *provided, however*, that a portion of the Loan (as described more fully below) shall be due and payable, at such place as may be designated by the City, upon the sale of Borrower’s fee simple interest in any portion of the Property (defined below) to a third party not affiliated with Borrower (a “Property Sale”). Following a Property Sale, the proceeds from the Property Sale shall be applied as follows:

“(1) first towards the payoff (the “Senior Loan Payoff”) by Borrower of the senior lender loan of up to \$5,500,000.00 (the “Senior Loan”);

“(2) then towards the payoff by or reimbursement to Borrower of any development, construction or due diligence costs related to the Property of up to a total of \$350,000.00;

“(3) remaining funds (if any) shall be paid to the City and applied towards the Loan as follows: (a) first, towards any outstanding principal balance of the First Loan Amount, (b) then, towards any outstanding interest that has accrued on the Second Loan Amount, and (c) finally, towards the outstanding principal balance of the Second Loan Amount.; and”

**2.** Section 1(D) of the Lon Agreement is deleted in its entirety.

**3.** Section 2 of the Loan Agreement entitled **SECURITY** is amended to read as follows:

“2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Deed of Trust (the “Deed of Trust”), in a form satisfactory to the City and Borrower, granted by Borrower and encumbering the real property known and numbered as 4800 Race Street (the “Property”), which such Deed of Trust shall be subordinated to (i) any instruments securing the Senior Loan; (ii) any instruments securing any construction or development loans (the “Construction Loans”); (iii) the Parking Easement granted by Borrower to 48Race CV Ground Tenant LLC or its successors or assigns in connection with the first phase of development on the Property and to be recorded against the Property (the “Parking Easement”); and (iv) the Master Declaration of Covenants, Conditions, and Restrictions to be recorded against the Property related to the Property (the “Master Declaration”) (items (i) through (iv) collectively, the “Senior Security Instruments”), as described in Section 3 below, up to a total amount of \$5,500,000.00 (the “Senior Debt Cap”). The City may release such parts of the Property from the Deed of Trust as necessary to facilitate 1) any Property Sale or 2) any long-term ground lease for any portion of the Property whereby Borrower leases such portion of the Property to a third party not affiliated with Borrower (a “Land Lease”), in either case as long as (a) the Director of DEDO, defined below, determines that appropriate collateral for the Loan is in place to secure any outstanding portion of the Loan, and (b) Borrower ensures to the City’s satisfaction compliance with the CDBG National Objectives in Section 6 below by way of a covenant (a “Covenant”) that runs with the Property or the applicable part of the Property being sold or leased.”

4. Section 3 of the Loan Agreement entitled **SUBORDINATION** is amended to read as follows:

“3. **SUBORDINATION**: The Director of the City’s Denver Economic Development & Opportunity (“DEDO”) or permitted designee, is authorized to execute documents necessary to subordinate the lien of the Deed of Trust to any Senior Security Instruments so long as (i) such documents are in a form satisfactory to the City Attorney and Borrower; (ii) the encumbrances senior to the Deed of Trust are only with respect to the Senior Loans, the Construction Loans, the Easement, and/or the Master Declaration, up to the Senior Debt Cap; and (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Deed of Trust. So long as the foregoing conditions are satisfied, the City’s lien (evidenced by the Deed of Trust) shall be subordinate to the Senior Security Instruments.”

5. Section 8(A) of the Loan Agreement is amended to read as follows:

“A chart identifying the Minimum New Jobs, including job title and job classification, to be created and retained is attached hereto and incorporated herein as Exhibit A-1. The listing of definitions for job titles and job classifications as defined by the Economic Development Administration

(EDA) is attached hereto and incorporated herein as Exhibit A-2. Borrower agrees to create, or cause the creation of, these jobs by the one hundred twentieth (120th) month from the month of execution of the Promissory Note. Unless extended in writing by DEDO, failure to meet this deadline will constitute default under the Article entitled “Default and Acceleration,” herein below.”

6. All references to “Office of Economic Development” in the Loan Agreement shall be amended to read “Denver Economic Development & Opportunity”, and all references to “OED” shall be amended to read “DEDO”.

7. As herein amended, the Loan Agreement is affirmed and ratified in each and every particular.

8. This Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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**Contract Control Number:** OEDEV-202055580-01 [ALF 201520628-01]  
**Contractor Name:** 48RACE LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

OEDEV-202055580-01 [ALF 201520628-01]  
48RACE LLC

By: \_\_\_\_\_ SEE NEXT PAGE

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**Contract Control Number:**  
**Contractor Name:**

OEDEV-202055580-01 [ALF 201520628-01]  
48RACE LLC



By: \_\_\_\_\_

Name: Aaron Miripol

Title: President & CEO

ATTEST: [if required]

By: \_\_\_\_\_ (please print)

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_