

FAÇADE AGREEMENT

This FAÇADE AGREEMENT ("Agreement") is made and entered into this 6th day of June, 2013, by and between THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic, 19 Old Town Square, Suite #230, Fort Collins, CO 80524 (the "DDA"); CONDOR WILD, LLC, a Colorado limited liability company ("Condor"); LINDEN STREET TREEHOUSE, LLC, a Wyoming limited liability company ("Treehouse"); BBP Linden, LLC, a Colorado limited liability company ("BBP"); and HISTORIC LINDEN CONDOMINIUM ASSOCIATION, a Colorado nonprofit corporation (the "Association").

WITNESSETH:

WHEREAS, on April 1, 1994, the DDA entered into an Agreement with Historic Linden, LLC, which Agreement was recorded with the Larimer County Clerk and Recorder on April 27, 1994 at Reception No. 94036314 (the "Original Agreement"), regarding the improvement and continuing obligation to maintain the southeast-facing (Linden Street) and southwest-facing (Walnut Street) facades ("Facade") of the property located at 201 Linden Street, Fort Collins, Colorado, known as the Linden Hotel, and legally described as follows:

A portion of Lots 2 and 4, Block 13, in the City of Fort Collins, Colorado, to wit: Beginning at the Southeast corner of Lot 2 (being the most Southerly corner) in said Block 13; thence Northeasterly on line of Linden Street, 75 feet; thence Northwesterly parallel to Walnut Street, 100 feet; thence Southwesterly parallel to Linden Street 75 feet; thence Southeasterly on line of Walnut Street, 100 feet, to Point of Beginning, COUNTY OF LARIMER, STATE OF COLORADO,

which property lies within the boundaries of the DDA; and

WHEREAS, pursuant to the Original Agreement, Historic Linden, LLC completed improvements to the Façade in 1995 which were consistent with the historic nature of downtown and the historic nature of the Linden Hotel; and

WHEREAS, pursuant to a Deed for Conveyance of Façade and Grant of Maintenance Easement for Façade Regarding the Linden Hotel recorded with the Larimer County Clerk and Recorder on March 27, 1995 at Reception 95016796 (the "Original Grant"), Historic Linden, LLC conveyed to the DDA, as required by the Original Agreement, that portion of the Linden Hotel constituting the Façade thereof, which is legally described as follows:

RECEPTION#: 20130044969, 06/13/2013 at 03:32:36 PM, 1 OF 15, R \$81.00 TD Pgs: 0 Angela Myers, Clerk & Recorder, Larimer County, CO

Return to:
✓ Lily, Rogers & Martell, LLC
300 S. Howes Street
Ft. Collins, CO 80521
JPK

A portion of Lot 2 and 4, Block 13, Town of Fort Collins, Larimer County, Colorado. Being more particularly described as follows:

Considering the Northwestern Right-of-way line of Linden Street as bearing N 41°10' E as determined by a cross chiseled on 7.0' offsets from said Right-of-way and nails set in concrete on 7.0' offsets from said Right-of-way and with all bearings contained herein relative thereto.

Commencing at the most Southerly corner of said Lot 2; thence N 41°10' E along the Southeasterly line of said Lot 2 7.8 feet to the TRUE POINT OF BEGINNING; thence continuing along said line N 41°10' E 67.5 feet; thence departing from said line N 48°50' W 1.6 feet; thence S 41°10' W 7.4 feet; thence N 71°05' W 2.7 feet; thence S 41°10' W 6.3 feet; thence S 26°35' E 2.7 feet; thence S 41° 10' W 21.0 feet; thence N 71° 05' W 2.7 feet; thence S 41° 10' W 6.3 feet; thence S 26° 35' E 2.7 feet; thence S 41° 10' W 22.2 feet; thence S 86° 10' W 9.2 feet; thence N 48° 50' W 53.4 feet; thence N 18° 55' E 2.6 feet; thence N 48° 50' W 4.8 feet; thence S 63° 25' W 2.6 feet; thence N 48° 50' W 32.2 feet; thence S 41° 10' W 1.6 feet to the Southwesterly line of said Lot 4; thence along said line S 48° 50' E 50.5 feet more or less to the most Southerly point of said Lot 4; thence departing from said line and along the most Southerly line of said Lot 2 S 48° 50' E 42.2 feet; thence departing from said line N 86° 10' E 11.0 feet more or less to the TRUE POINT OF BEGINNING, COUNTY OF LARIMER, STATE OF COLORADO;

WHEREAS, also pursuant to the Original Grant, Historic Linden, LLC granted to the DDA an easement over and across that portion of the Linden Hotel reasonably necessary for maintenance of the Façade and, further, reserved unto itself an easement over and across the Facade for the maintenance thereof; and

WHEREAS, the terms of the Original Agreement and the Original Grant expire on March 8, 2025, at which time the continuing obligations of the Original Agreement and the easements of the Original Grant shall terminate and, concurrently therewith, title to the Facade shall automatically revert to Historic Linden, LLC or its successors and assigns in the Linden Hotel: and

WHEREAS, the Linden Hotel was replatted as the Historic Linden Condominiums, more particularly described as follows:

Historic Linden Condominiums, being a portion of Lots 2 and 4, Block 13, Town of Fort Collins, Larimer County, Colorado, in accordance with the Plat and Map of Historic

Linden Condominiums, recorded on April 28, 1995, at
Reception No. 95023913;

(referred to herein as the "Property"); and

WHEREAS, the Property is subject to the Condominium Declaration for Historic Linden Condominiums recorded with the Larimer County Clerk and Recorder on April 28, 1995 at Reception No. 95023914, pursuant to which the Association is responsible for maintenance of the common elements of the Property including the Facade; and

WHEREAS, Historic Linden, LLC has conveyed each of the three condominium units within the Property, together with undivided interests in the common elements thereof to successor owners; and

WHEREAS, Condor is the owner of Condominium Unit 1; Treehouse is the owner of Condominium Unit 2; and BBP is the owner of Condominium Unit 3; and Condor, Treehouse and BBP are referred to collectively herein as the "Owners"; and

WHEREAS, the provisions of the Original Agreement and the burdens and benefits therein are covenants running with the Property during the term of the Original Agreement and inure to the benefit of and are binding upon the Owners and the Association as successors of Historic Linden, LLC; and

WHEREAS, as a result of the passage of time and the subsequent deterioration of the Façade since 1995, the Owners, in 2012, restored and reconstructed numerous sandstone columns, sills and storefronts on the Facade with historic and high quality facade elements and materials; and

WHEREAS, in accordance with the legislative purpose of downtown development authorities as set forth in C.R.S. §31-25-801, the DDA has a substantial interest in the development, redevelopment, and renovation of property within its boundaries; and

WHEREAS, pursuant to C.R.S. §31-25-808, the DDA has the authority to acquire by purchase, lease, option, gift, grant, devise or otherwise an easement on, over and across any property; and

WHEREAS, the Board of Directors of the DDA ("DDA Board") agreed to pay certain monies to the Owners equal to the total of the actual eligible construction costs of the 2012 Façade Improvements, as hereinafter defined, up to a maximum of Seventeen Thousand One Hundred Thirty-nine Dollars (\$17,139) as the purchase price for the DDA to acquire a five-year extension of the ownership interest granted to the DDA under the Original Grant, in exchange for certain commitments from the Owners in connection with the design, construction, maintenance and use of such improvements which exceed

normal development requirements and create a strong pedestrian orientation and its commitment to pay the DDA's legal fees and expenses in connection herewith; and

WHEREAS, the DDA Board, at a duly-convened meeting, determined that this Agreement is consistent with the goals and purposes of the DDA and thereupon approved the terms of this Agreement and authorized the Chairperson of the Board of the DDA to execute it.

NOW, THEREFORE, by and in consideration of the above premises and the within terms and conditions, the parties hereto agree as follows:

1. ORIGINAL AGREEMENT

The Owners and the Association, as successors of Historic Linden, LLC, specifically acknowledge and affirm their continuing obligations under Sections 6 the Original Agreement to provide, among other things, maintenance of the Façade, until the expiration of the Original Agreement.

2. FACADE IMPROVEMENTS

The Owners have restored and reconstructed numerous sandstone columns, sills and storefronts on the Façade with historic and high quality facade elements and materials, consistent with the designs (including the facia, soffits, exterior walls, doors, windows, canopies and signage for the Owners and any tenants of the Property, and all structural support materials) attached hereto and incorporated herein as **Exhibit "A"** ("Façade Improvements") and, further, has caused the Façade Improvements to be constructed substantially in accordance with the approved designs therefor.

3. PAYMENT OF FACADE IMPROVEMENT COSTS

The DDA has received from the Owners an accurate and detailed accounting of the actual costs to construct the Façade Improvements in the amount of Thirteen Thousand Six Hundred Eleven Dollars (\$13,611). Therefore, upon the occurrence of all of the following events, the DDA shall pay to the Owners collectively the sum of Thirteen Thousand Six Hundred Eleven Dollars (\$13,611):

3.1 Approval by the Landmark Preservation Commission of the methodology and materials used for construction of the Façade Improvements;

3.2 Receipt by the DDA of documentation from the Owners' contractors of deconstruction as a method for minimizing construction and demolition waste from entering the landfill;

3.3 Adoption by the City Council of the City of an ordinance approving the appropriation of sufficient funds to the DDA to fund the acquisition of the property interest herein identified;

3.4 Receipt by the Owners of a Letter of Completion from the City for the Façade Improvements;

3.5 Approval by the DDA of the completed Façade Improvements in accordance with the approved designs therefor; and

3.6 Payment by the Owners of fees for recording of the Façade Agreement to be provided upon execution of this Agreement; and

3.7 Payment by the Owners to the DDA, in the amount of Six Hundred Eighty Dollars and 55/100 (\$680.55), for legal fees and expenses incurred by the DDA in connection herewith, to be provided upon execution of this Agreement.

4. EXTENSION OF OWNERSHIP INTEREST/MAINTENANCE EASEMENTS

As consideration for the payment of the Façade Improvement costs by the DDA to the Owners pursuant to Section 3 hereof, the Owners hereby agree to a five (5) year extension of the ownership interest granted to the DDA in the Original Grant, with such extension to begin on the date that such ownership interest was to revert back to the Owners pursuant to Section 3 thereof, which is March 8th, 2025, and shall continue through March 7, 2030 (the "Extended Term"). Furthermore, the maintenance easement granted to the DDA, and reserved to the Owners, in the Original Grant shall be extended by an equal amount of time, for the purposes therein identified.

5. THE OWNERS' CONTINUING OBLIGATIONS

As additional consideration for the payment of the Façade Improvement costs by the DDA to the Owners pursuant to Section 3 hereof, the Owners agree to the following terms and conditions contained in this Section 5 (i.e. Sections 5.1 through 5.6 inclusive), which shall apply to the Property and shall be binding upon the Owners, their respective successors and assigns, the Association, and all future legal owners of the Property beginning as of the date of this Agreement and continuing through the Extended Term, as set forth in Section 4 above.

5.1 Maintenance. The Owners and the Association shall be obligated to maintain and repair the Façade Improvements, including replacement of all or a part thereof if necessary, in a manner which will preserve the Façade Improvements in substantially the same condition as that existing at the time of execution of this Agreement. The Owners and the Association shall further be obligated to maintain the

Property to the extent required to provide structural support for the Façade Improvements. The DDA shall have no maintenance obligation whatsoever for the Façade Improvements or the Property and shall not be liable in any manner for any costs associated with the Façade Improvements or the Property. In the event that the Owners, the Association, or their respective successors and assigns, shall fail to maintain and repair the Façade Improvements (or the Property to provide support for the Façade Improvements) as required herein, the DDA shall give written notice to the Owners, the Association, or their respective successors and assigns, requiring the Owners and the Association to commence the requested maintenance and repair within ten (10) days of receipt of such notice and to diligently complete such maintenance and repair within a reasonable amount of time thereafter as specified in such notice. If such work is not commenced or is not completed as required by such notice, the DDA may, in its sole discretion, cause such work to be completed and may thereafter assess the entire cost of such work against the Owners, the Association, or their respective successors and assigns. The DDA shall have a lien on the Property to secure any amount owed to it for repair and maintenance performed by it on account of the failure to maintain and repair the Façade Improvements or the Property as required herein, together with attorneys' fees and costs incurred by the DDA in connection with such repair and maintenance and the lien proceedings, and such lien may be foreclosed as provided by law for the foreclosure of real estate mortgages.

5.2 Indemnification. The Owners shall indemnify and hold the DDA and the City harmless from and against any damage, liability, loss or expense (including attorneys' fees) incurred by the DDA or the City arising out of, or in any way connected with the Façade Improvements, their use, maintenance, repair or replacement, except with regard to any use, maintenance, repair or replacement made by the DDA or the City, or their employees, agents or contractors, or caused by the gross negligence or willful misconduct of the DDA or the City, or their employees, agents or contractors.

5.3 Insurance. The Owners, or the Association, shall purchase and maintain property and casualty insurance on the Property, including the Façade Improvements, to the full insurable value thereof. The Owners, or the Association, shall further purchase and maintain general liability coverage in connection with the Property, including the Façade Improvements, in amounts at least equal to the maximum amount of recovery against public entities and employees under the Colorado Governmental Immunity Act (C.R.S. §24-10-101 et seq.) and any amendments to such limits which may from time to time be made. The DDA and the City shall be named as additional insureds on all such policies. All insurance required hereunder shall be issued by an insurance company authorized to do business in Colorado which meets all of the requirements of the Division of Insurance for that purpose. The DDA or the City may periodically require from the Owners, or the Association, as applicable, proof of the insurance coverage required herein.

5.4 Environmental Conditions Liability. The Owners specifically represent that, to the best of their knowledge, as of the date of this Agreement, all portions of the Property are in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the U. S. Environmental Protection Agency Regulations at 40 C.F.R., Part 261, and that the Property is in compliance with all such requirements pertaining to the disposal or existence in or on such Property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Owners, for themselves and their respective successors in interest, do hereby indemnify and hold harmless the DDA from and against any damage, liability, loss or expense (including attorneys' fees and costs) incurred by the DDA arising out of, or in any way connected with the environmental conditions on, of or affecting the Property that exist as of the date of this Agreement. The DDA agrees to give notice to the Owners of any claim made against them to which this indemnity and hold harmless agreement by the Owners could apply, and the Owners shall have the right to defend any lawsuit based on such claim and to settle any such claim provided the Owners must obtain a complete discharge of all DDA liability through such settlement.

5.5 Prohibition Against Alterations. No alteration of the Facade Improvements including, without limitation, alterations of or additions to the canopies or signage approved by the DDA and shown on Exhibit "A" shall be made without the express written approval of the DDA, which approval shall not be unreasonably withheld. The DDA, in considering such requests, shall take into account the reasons for such request and whether the requested alteration is consistent with the character of the approved designs for the Façade Improvements or is otherwise compatible with the character of the redeveloped properties within the downtown as well as the specific area in which the Property is located. The DDA shall not remove or alter the Facade Improvements except in performing any maintenance or repair thereof in accordance with this Agreement. The Owners shall be responsible for ensuring compliance with this Section 5.5 by the Association, any current or future tenants, lessees or other occupants of the Property, and shall promptly take all such corrective action as may be necessary to remedy any violation hereof.

5.6 Tenant Notification, Terms of Lease Agreements. The Owners hereby warrant that no lessee of the Property has any purported rights under its lease agreement with any Owner to make any additions to, or otherwise modify, the Façade or Façade Improvements. The Owners agree that any lease agreements for the Property entered into after execution of the this Agreement shall be consistent with the terms and conditions of this Agreement, and shall have incorporated therein all applicable requirements and restrictions of such documents regarding use and occupancy of the Property, including, by way of example and without limitation, the restrictions on alterations contained in Section 5.5 above.

6. COVENANTS

The provisions of this Agreement and the burdens and benefits herein shall be covenants running with the Property and shall inure to the benefit of, and be binding upon, the Owners, their respective successors and assigns, and all future owners, tenants and lessees of the Property during the Term. Upon expiration of the Extended Term, as set forth in Section 4 above, this Agreement shall terminate and no longer affect title to the Property. This Agreement shall be recorded with the Clerk and Recorder of Larimer County, Colorado.

7. ANNUAL APPROPRIATION

All financial obligations of the City or the DDA arising under this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the City Council of the City, in its discretion, and/or the Board of Directors of the DDA, in its discretion, as applicable.

8. SUCCESSOR ENTITY TO THE DDA

In the event that the legal existence of the DDA terminates during the Term of this Agreement, it is expressly acknowledged by all the parties hereto that the City is designated the DDA's successor entity, and all rights and obligations of the DDA set forth herein shall thereupon become the rights and obligations of the City.

9. THE CITY AS THIRD-PARTY BENEFICIARY

It is expressly acknowledged by the parties hereto that the City is a third-party beneficiary to this Agreement and shall be entitled to enforce any and all provisions of this Agreement in the same manner as the DDA.

10. NOTICES

All notices which may be given to parties hereunder shall be in writing and shall be sent to the parties at the address specified below:

DDA: The Fort Collins, Colorado
Downtown Development Authority
Attn: Executive Director
19 Old Town Square, #230
Fort Collins, CO 80524

With a copy to: Liley, Rogers & Martell, LLC
Attn: Lucia A. Liley, Esq.
300 South Howes Street
Fort Collins, CO 80521

Owners: Condor Wild, LLC
Attn: Wally Van Sickle
420 Riddle Drive
Fort Collins, CO 80521

Linden Street Treehouse, LLC
Attn: David Diehl
P.O. Box 481
Fort Collins, CO 80522

BBP Linden, LLC
Attn: Mitchell M. Morgan
760 Whalers Way Unit A200
Fort Collins, CO 80525

Association: Historic Linden Condominium Association
Attn: Mitchell M. Morgan
760 Whalers Way Unit A200
Fort Collins, CO 80525

or to any change of address given in writing by one party or the other.

11. DEFAULT/REMEDIES

In the event of a breach or default by any party hereunder, as determined by a court of competent jurisdiction, the non-defaulting party shall be entitled to any and all remedies provided under this Agreement or available at law or equity, including, without limitation, actions for damages, injunctive relief, and specific performance.

12. ATTORNEYS' FEES AND COSTS

Should any party default in any of the covenants or obligations in this Agreement, the defaulting party will pay reasonable expenses or enforcing this Agreement, including reasonable attorneys' fees.

13. GOVERNING LAW

This Agreement shall be governed by, and its terms construed under, the laws of Colorado.

14. BINDING EFFECT

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

DATED the date as set forth above.

DDA:

THE FORT COLLINS, COLORADO
DOWNTOWN DEVELOPMENT
AUTHORITY, a body corporate and politic

By: 
Wynne Odell, Chairperson
Jerry Kennell, Chair

ATTEST:

By: 
Janet Bramhall, Secretary

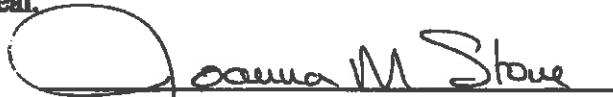
COUNTY OF LARIMER)
)ss:
STATE OF COLORADO)

The foregoing instrument was acknowledged before me this 9th day of May, 2013, by Wynne Odell, Chairperson of The Fort Collins, Colorado Downtown Development Authority, a body corporate and politic.

Jerry S. Kennell

Witness my hand and official seal.

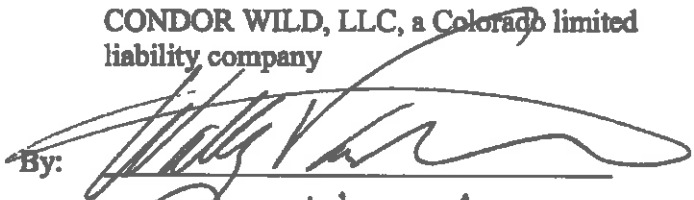



Notary Public
My commission expires: 2/6/2015

MY COMMISSION EXPIRES:
February 6, 2015
201 Linden.Facade Agr.5-7-13

OWNER:

CONDOR WILD, LLC, a Colorado limited liability company

By: 

Printed Name: Wally Van Sickle III

Title: Manager

STATE OF COLORADO)
)ss:
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 6th day of June, 2013, by Wally Van Sickle III as Manager of Condor Wild, LLC.

Witness my hand and official seal.

GRETCHEN GEORGE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19874150712
MY COMMISSION EXPIRES JULY 9, 2015


Notary Public
My commission expires: 7/9/15

OWNER:

LINDEN STREET TREEHOUSE, LLC, a
Wyoming limited liability company

By:

[Signature]

Printed Name: David Diehl

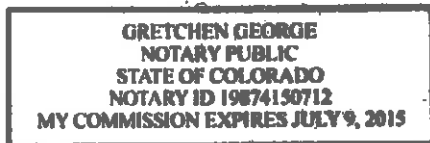
Title: Manager

STATE OF Colorado)
)ss:
COUNTY OF Larimer)

The foregoing instrument was acknowledged before me this 6th day of
June, 2013, by David Diehl as Manager of Linden Street
Treehouse, LLC.

Witness my hand and official seal.

[Signature: Gretchen George]
Notary Public
My commission expires: 7/9/15



OWNER:

BBP LINDEN, LLC, a Colorado limited liability company

By: _____

Printed Name: MITCHELL M. MORGAN

Title: MANAGER

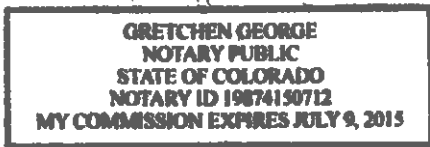
STATE OF COLORADO)

)ss:

COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 13th day of May, 2013, by Mitchell M. Morgan as Manager of BBP Linden, LLC.

Witness my hand and official seal.



Gretchen George
Notary Public
My commission expires: 7/9/15

ASSOCIATION:

HISTORIC LINDEN CONDOMINIUM ASSOCIATION, a Colorado nonprofit corporation

By:

Morgan

Printed Name: MITCHELL M. MORGAN

Title: PRESIDENT

STATE OF COLORADO)

)ss:

COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 13th day of May, 2013, by Mitchell M. Morgan as President of Historic Linden Condominium Association.

Witness my hand and official seal.

Gretchen George
Notary Public
My commission expires: 7/9/15

GRETCHEN GEORGE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19874130712
MY COMMISSION EXPIRES JULY 9, 2015

Exhibit "A"
Façade Improvements

