

## REIMBURSEMENT AGREEMENT

This **REIMBURSEMENT AGREEMENT** is made and entered into as of this 29<sup>th</sup> day of January, 2020 by and between **FOUNDRY LOVELAND METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **THE FOUNDRY LOVELAND, LLC**, a Colorado limited liability company (“Foundry”).

### RECITALS

WHEREAS, on March 16, 2017, Foundry Loveland Metropolitan District (the “District”) and The Foundry Loveland, LLC (“Foundry”) entered into that certain Funding and Reimbursement Agreement, as amended by the First Amendment to 2017 Funding and Reimbursement Agreement dated October 19, 2017 and that Second Amendment to 2017 Funding and Reimbursement Agreement dated November 29, 2019 (collectively, the “2017 Agreement”), for the purpose of consolidating all understandings and commitments between the Parties relating to the funding and repayment of certain District operations and maintenance costs and other budgeted general fund expenditures of the District, and in connection therewith, issued a Subordinate Note to Foundry to evidence the District’s repayment obligation to Foundry; and

WHEREAS, capitalized terms used herein shall have the meaning given to them in the 2017 Agreement; and

WHEREAS, pursuant to Paragraph 1 of the 2017 Agreement, Foundry agreed to advance funds to the District through December 31, 2019 (the “Funding Obligation Term”); and

WHEREAS, pursuant to Paragraph 5.A. of the 2017 Agreement, if the District lacks sufficient funds to pay the Subordinate Note in full on the date of maturity and until such time as the District is able to pay in full the amount of any Subordinate Note then outstanding at maturity, the District agreed to annually issue a new Subordinate Note to refund any existing Subordinate Note which, at the date of its maturity set as December 31 of each calendar year, remains unpaid; and

WHEREAS, in accordance with Paragraph 5.A. of the 2017 Agreement and to evidence the District’s continued reimbursement obligation to Foundry for advances received, the District lacked sufficient funds to pay in full the Subordinate Note then outstanding on December 31, 2019 (“2019 Note”) and, therefore, the District issued a new Subordinate to Foundry, dated January 1, 2020, with a maturity date of December 31, 2020 (“2020 Note”), which 2020 Note refunded the 2019 Note; and

WHEREAS, pursuant to the terms of the 2020 Note, the 2020 Note is not transferable, negotiable, or otherwise payable to any party other than Foundry; and

WHEREAS, the District and Foundry desire to amend the terms of the 2020 Note by refunding the 2020 Note and issuing a new Subordinate Note with a maturity date of December 31, 2049, which new Subordinate Note shall be assignable as provided therein; and

WHEREAS, the District and Foundry desire to enter into this Reimbursement Agreement to set forth the revised terms of the Subordinate Note and to authorize the refunding of the 2020 Note and issuance of a new Subordinate Note pursuant to the terms of this Reimbursement Agreement.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the District and Foundry agree as follows:

### COVENANTS AND AGREEMENTS

1. Issuance of Subordinate Note. The District has agreed to refund the 2020 Note and issue and deliver to Foundry, and Foundry has agreed to accept, a new Subordinate Note dated January 29, 2020, with a maturity date of December 31, 2049, as provided in Exhibit A hereof, which new Subordinate Note constitutes a multiple fiscal year obligation under the State of Colorado Constitution, is authorized pursuant to a vote of the eligible electors of the District and shall not be subject to annual appropriation. Said new Subordinate Note shall be issued in the principal amount outstanding on the 2020 Note as of January 29, 2020, and include all unpaid accrued interest thereon.

2. Interest. The Subordinate Note issued pursuant to Paragraph 1 herein shall bear simple interest at the rate of Two Percent (2%) plus the current Federal Reserve Board Prime Rate or Six Percent (6%) whichever is greater, from the date such loan was originally made to the District. If the Subordinate Note, or any portion thereof, is redeemed prior to its maturity date, then the interest that accrued on the principal amount so redeemed, must be paid upon redemption; for purposes of the foregoing, interest shall be deemed to have accrued up to and including the date of redemption.

3. Terms of Repayment; Source of Revenues.

A. The District shall repay the Subordinate Note from any legally available revenues of the District, including fees, rates, tolls, charges and revenues resulting from the imposition of ad valorem taxes, net of any current operating and maintenance costs of the District. The District hereby agrees to certify a mill levy sufficient to pay when due, any payments of principal and/or interest due on any Subordinate Note in accordance with the terms of this Reimbursement Agreement, subject to any restrictions provided in the District's Service Plan and electoral authorization; provided, however, that any such repayment shall be subject to the terms and conditions of, and such repayment obligations shall be subordinate to, the issuance of any bonds, loans, notes, pledge agreements, intergovernmental agreements or other similar debt instruments (collectively, the "Bonds") to fund capital improvements now or hereafter and any refundings thereof, and the provisions of any bond resolution, indenture or any other document related thereto; and further provided that any mill levy certified by the District for the purpose of repaying loans made hereunder shall not be higher than the Service Plan mill levy cap, as it now exists or may be amended from time to time; provided that, in no event, shall the mill levy exceed 50 mills. The Subordinate Note must be paid in full by the District prior to

payment of any other obligation thereof which may have a claim on any District revenues which are otherwise available for payment of the Subordinate Note, except for current District operation and maintenance expenses and other budgeted general fund expenditures of the District, and as otherwise provided herein.

B. Repayment by the District of some or all of the amounts owing under the Subordinate Note shall be contingent upon legally available revenues of the District. Failure by the District to repay the amounts due thereunder as a result of insufficient funds shall not constitute a default thereunder, nor subject the District to any claims and/or causes of action by Foundry, including mechanic's liens, arising out of the District's nonperformance of its payment obligation. Failure by the District to make a payment of principal and/or on the Subordinate Note shall not cause or permit acceleration thereof.

C. The Subordinate Note may be prepaid, in whole or in part, at any time without redemption premium or other penalty, but with interest accrued to the date of the prepayment on the principal amount to be prepaid. Any and all prepayments shall first be applied to unpaid, accrued interest and then to principal.

D. Any repayment made by the District to Foundry shall be notated on Schedule "A" attached to such Subordinate Note.

4. Termination. The District's obligations hereunder shall terminate at the earlier of: (i) the repayment in full of the amounts due and owing under the Subordinate Note issued hereunder or (ii) December 31, 2049, regardless of whether the District has paid the Subordinate Note in full. Any outstanding obligations owed by the District on the Subordinate Note as of December 31, 2049 shall be discharged.

5. Conflict of Terms. The terms of this Reimbursement Agreement may be used to construe the intent of the District and Foundry in connection with the issuance of any Subordinate Note, and shall be read as nearly as possible to make the provisions of any Subordinate Note and this Reimbursement Agreement fully effective. Should any irreconcilable conflict arise between the terms of this Reimbursement Agreement and the terms of any Subordinate Note, the terms of such Subordinate Note shall prevail.

6. Enforceability. If, for any reason, the Subordinate Note issued pursuant to this Reimbursement Agreement is determined to be invalid or unenforceable (except in the case of fraud by Foundry in connection therewith), the District shall issue a new promissory note to Foundry that is legally enforceable. Said new promissory note must evidence the District's obligation to repay all amounts then outstanding under the existing Subordinate Note.

7. Tax Covenant. In the event the District is advised by nationally recognized bond counsel that payments of all or any portion of interest due on any Subordinate Note issued hereunder may be excluded from gross income of the holder thereof for federal income tax purposes upon compliance with certain procedural requirements and restrictions that are not inconsistent with the intended uses of funds contemplated herein and are not overly burdensome to the District, the District agrees to take all action reasonably necessary to satisfy the applicable

provisions of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder, in accordance with written instructions of nationally recognized bond counsel. Foundry acknowledges that no representations or warranties whatsoever have been made by the District or its Board of Directors as to the treatment for federal or state income tax purposes of any interest payable hereunder.

8. Notices and Place for Payments. Any notices, demands, or other communications required or permitted to be given by any provision of this Reimbursement Agreement shall be given in writing and shall be delivered in person, by certified mail, postage prepaid, return receipt requested, by a commercial overnight courier that guarantees next day delivery and provides a receipt, or by electronic mail communications (“E-Mail”), and such notices shall be addressed as follows:

**If to the District:** Foundry Loveland Metropolitan District  
c/o Pinnacle Consulting Group, Inc.  
550 W. Eisenhower Blvd.  
Loveland, CO 80537  
Attn: Peggy Dowswell  
Email: [peggyd@pinnacleconsultinggroupinc.com](mailto:peggyd@pinnacleconsultinggroupinc.com)

**With a copy to:** Icenogle Seaver Pogue, P.C.  
4725 S. Monaco St., Suite 360  
Denver, Colorado 80237  
Attn: Alan D. Pogue  
Email: [APogue@ISP-law.com](mailto:APogue@ISP-law.com)

**If to Foundry:** The Foundry Loveland, LLC  
c/o Brinkman Partners  
3528 Precision Drive, Suite 100  
Fort Collins, CO 80528  
Email: [jordan.swisher@bruebaukol.com](mailto:jordan.swisher@bruebaukol.com)

or to such other address as either party may from time to time specify in writing to the other party. Notice shall be considered delivered upon delivery by certified mail, overnight courier, E-Mail or upon hand delivery. When using E-Mail to provide notice, the receiving party must respond via “reply” acknowledging receipt of the E-Mail notification. If the sending party fails to receive acknowledgement of such receipt, an alternative form of notification must be used.

9. Amendments. Except as otherwise provided herein, this Reimbursement Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by both the District and Foundry.

10. Applicable Laws. This Reimbursement Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado.

11. Severability. If any clause or provision of this Reimbursement Agreement is adjudged invalid and/or unenforceable by a court of competent jurisdiction or by operation of any law, such clause or provision shall not affect the validity of this Reimbursement Agreement as a whole, but shall be severed herefrom, leaving the remaining Reimbursement Agreement intact and enforceable.

12. Authority. By execution hereof, the District and Foundry represent and warrant that their respective representatives signing hereunder have full power and authority to execute this Reimbursement Agreement and to bind the respective party to the terms hereof.

13. Legal Existence. The District will maintain its legal identity and existence so long as any of the advanced amounts contemplated herein remain outstanding. The foregoing statement shall apply unless, by operation of law, another legal entity succeeds to the liabilities and rights of the District hereunder without materially adversely affecting Foundry's privileges and rights under this Reimbursement Agreement.

14. Counterparts. This Reimbursement Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

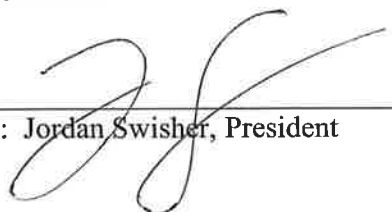
15. Entire Agreement. This Reimbursement Agreement and Subordinate Note issued hereunder constitute and represent the entire integrated agreement between the District and Foundry with respect to the matters set forth herein and hereby supersedes any and all prior negotiations, representations, agreements, or arrangements of any kind with respect to those matters, whether written or oral. This Reimbursement Agreement shall become effective upon the date and year first above written.

16. Termination of 2017 Agreement. The 2017 Agreement is hereby terminated upon the effective date of this Reimbursement Agreement and the issuance of the new Subordinate Note hereunder.

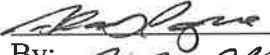
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IN WITNESS WHEREOF, the District and Foundry have executed this Agreement, effective as of the date and year first above written.

**FOUNDRY LOVELAND METROPOLITAN DISTRICT**

  
By: Jordan Swisher, President


ATTEST:

  
By: AWAN D. OGWUE  
Its: GENERAL COUNSEL

**THE FOUNDRY LOVELAND, LLC,**  
a Colorado limited liability company,

By: GP FOUNDRY, LLC,  
a Colorado limited liability company, Manager

By: BRINKMAN ENTITY MANAGEMENT, LLC  
a Colorado limited liability company, Administrative Manager

By:   
\_\_\_\_\_  
Kevin Brinkman, Manager

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*Signature Page to Reimbursement Agreement*

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**EXHIBIT A**  
(To Reimbursement Agreement)

**SUBORDINATE PROMISSORY NOTE**

FOUNDRY LOVELAND METROPOLITAN DISTRICT  
REVENUE AND LIMITED TAX OBLIGATION  
SUBORDINATE PROMISSORY NOTE

PRINCIPAL AMOUNT: Two Hundred Sixty-Six Thousand Four Hundred Seventy-Nine Dollars (\$266,479)

INTEREST RATE: Two Percent (2%) plus the current Federal Reserve Board Prime Rate, or 6% whatever is greater, Simple Interest

DATED: January 29, 2020

REGISTERED OWNER: The Foundry Loveland, LLC ("Foundry")

MATURITY DATE: December 31, 2049

Foundry Loveland Metropolitan District (the "District"), a body corporate, politic and a political subdivision organized under the laws of the State of Colorado, for the value received, hereby promises to pay, but solely and only from, and contingent upon receipt of, the sources hereinafter described, the principal sum stated above, together with interest at the rate stated above, which interest shall accrue on said principal sum from and after the date hereof to the maturity date hereof, in lawful money of the United States of America to the registered owner named above on the maturity date stated above unless this Note shall be prepaid in full, in which case on such payment date.

In any case where the date of maturity for payment of interest and principal on this Note or the date fixed for prepayment hereof shall be a Saturday or Sunday, a legal holiday or a day on which banking institutions in the city or town of payment are authorized by law to close, then payment of interest and principal or prepayment price shall be made on the immediately following business day with the same force and effect as if made on the date of maturity or the date fixed for prepayment. Prior to the Maturity Date, and at such time as the District has available funds, this Note may be prepaid, in whole or in part, at any time without redemption premium or other penalty, but with interest accrued on the principal amount prepaid, up to and including the date of prepayment. Any and all prepayments shall first be applied to accrued, unpaid interest, then to the principal. This Note shall be paid in full from the sources hereinafter described prior to the payment of any other obligation of the District which may have a claim on any revenues thereof that would otherwise be available for the payment of this Note, other than current District operation and maintenance expenses and other budgeted general fund expenditures of the District; and provided, however, that any such repayment of this Note shall also be subject to the terms and conditions of, and such repayment obligation shall be subordinate to, the issuance of any general or special obligation bonds, revenue bonds or other multiple fiscal year obligations including, but not limited to, loans from financial institutions or intergovernmental agreements (collectively, the "Bond" or "Bonds") issued or entered into by the District to fund capital improvements now or hereafter and any refundings thereof, and the provisions of any Bond resolution, indenture, pledge agreement, loan document and/or any other document related thereto.

This Note is executed, issued and delivered to Foundry pursuant to that certain Reimbursement Agreement entered into by and between the District and Foundry, dated January 29, 2020 (the "Agreement"), the terms of which are hereby incorporated by reference, and has been issued, executed and delivered to refund an existing note issued to Foundry and dated January 1, 2020 ("2020 Note") and to evidence the repayment obligation of the District now existing with respect to funds previously advanced to or expended on behalf of the District from Foundry as set forth in therein. This Note is issued with a principal balance equal to the outstanding principal balance of the 2020 Note at the date of its maturity, and includes all unpaid accrued interest thereon.

Pursuant to the Agreement, the District is obligated to repay both the principal amount of this Note and any and all interest accrued thereon, from the sources and in the manner specified therein and herein, contingent upon the receipt of funds from certain revenue sources including fees, rates, tolls, charges, revenues resulting from the imposition of ad valorem taxes, and any other legally available revenues of the District. The obligation of the District to levy ad valorem taxes to provide for the payment of this Note is subject to restrictions provided in the District's Service Plan, the electoral authority of the District, the provisions of any Bond resolution, indenture, pledge agreement, loan document and/or any other document related to the District's issuance of any Bonds and any refundings thereof, and all other applicable law. **In no event shall the District impose a mill levy in excess of 50 mills for the repayment of this Note.**

Failure by the District to repay Foundry as a result of insufficient funds shall not constitute a default hereunder, nor subject the District to any claims and/or causes of action by Foundry, including mechanic's liens, arising out of the District's nonperformance of its payment obligation. Failure by the District to make a payment of principal or interest due on the Note shall not cause or permit acceleration thereof; rather, the Note shall continue to bear interest at the rate and manner specified herein.

Any payments made on the Note by the District shall also be evidenced on Schedule "A" attached hereto.

Neither the Board of Directors of the District, nor any person executing this Note, shall be personally liable hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

This Note is issued pursuant to and in full compliance with the Constitution and laws of the State of Colorado. All issues arising hereunder shall be governed by the laws of Colorado.

This Note is issued pursuant to the Supplemental Public Securities Act, Section 11-57-201, et seq., C.R.S., as amended.

**THIS NOTE IS A SPECIAL, LIMITED OBLIGATION OF THE DISTRICT AND SHALL BE PAYABLE SOLELY FROM CERTAIN REVENUES SPECIFIED IN THE AGREEMENT. THIS NOTE SHALL NOT CONSTITUTE A DEBT OR OBLIGATION OF THE STATE OF COLORADO OR LARIMER COUNTY, COLORADO. FOUNDRY**

**SHALL HAVE NO RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF COLORADO OR LARIMER COUNTY TO PAY THIS NOTE OR THE INTEREST THEREON, NOR TO ENFORCE PAYMENT OF THE SAME AGAINST THE PROPERTY OF THE STATE OF COLORADO OR LARIMER COUNTY, NOR SHALL THIS NOTE CONSTITUTE A CHARGE, LIEN OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE STATE OF COLORADO OR LARIMER COUNTY.**

**BY ITS ACCEPTANCE HEREOF, FOUNDRY ACKNOWLEDGES THAT THE DISTRICT AND ITS OFFICERS, ATTORNEYS, EMPLOYEES OR AGENTS NEITHER MAKE, NOR HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE PROPER TREATMENT FOR FEDERAL, STATE AND/OR LOCAL INCOME TAX PURPOSES OF THE INTEREST PAYABLE HEREUNDER.**

Notwithstanding any provision herein, or in any instrument now or hereafter securing the obligation of the District specified herein, the total liability for payments in the nature of interest shall not exceed the limit now imposed by the usury laws of the State of Colorado.

The District waives demand, presentment, and notice of dishonor and protest with respect to any payment due hereunder. No waiver of any payment or other right under this Note shall operate as a waiver of any other payment or right, including right of offset. If Foundry enforces this Note upon default, the District shall pay or reimburse Foundry for reasonable expenses incurred in the collection hereof or in the realization of any security hereof, including reasonable attorney's fees.

Notwithstanding any provision herein, or in any instrument now or hereafter securing the obligation of the District specified herein, the total liability for payments in the nature of interest shall not exceed the limit now imposed by the usury laws of the State of Colorado.

This Note may be assignable, transferable, negotiable, or otherwise payable to any party other than Rock Creek upon the prior written consent of the District.

If, for any reason, this Note is determined to be invalid or unenforceable (except in the case of fraud by Foundry in connection therewith), the District shall issue a new promissory note to Foundry that is legally enforceable. Said new promissory note shall evidence the District's obligation to repay all amounts due hereunder.

By signing in the space provided below, the District hereby acknowledges and agrees that this Note shall be irrevocable for all purposes and shall be binding upon the District. This Note may not be terminated orally, but only by payments in full or by a written discharge signed by the owner and holder of this Note.

It is hereby certified, recited and declared that all conditions, acts and things required to exist or occur by the Constitution or statutes of the State of Colorado, currently exist and either occurred prior to, or in connection with, the issuance of this Note.

IN WITNESS WHEREOF, the District has caused this Note to be executed in its name and on its behalf by its President, with an imprint of its seal affixed hereon, and attested by a designated representative of the District.



**FOUNDRY LOVELAND METROPOLITAN DISTRICT**

By: Jordan Swisher, President

ATTEST:

Deborah A Parly  
By: Deborah A. Parly  
Its: Legal Counsel

SCHEDULE A