

CLOCK DONATION AGREEMENT

This Clock Donation Agreement (**Agreement**) is entered into this 5 day of September, 2018, by and among the Rotary Club of Loveland, Colorado (**Donor**), Foundry Loveland Metropolitan District (**Donee**), and The Foundry Loveland, LLC (**Developer**). The Donor, Donee, and Developer are collectively referred to herein as the Parties.

RECITALS

A. Donor will acquire, as the sole owner, a certain clock (**Clock**) substantially similar to the photo of the clock attached hereto as Exhibit A.

B. Donor desires to donate the Clock to the citizens of the City of Loveland, Colorado (**City**) for public enjoyment.

C. Donee is a quasi-municipal corporation and political subdivision of the State of Colorado that was organized to publicly serve the needs of a new project known as the Foundry being developed in the City of Loveland by the Developer.

D. Donee will own, operate and maintain a new public plaza (**Public Plaza**) being constructed as part of the Foundry project.

E. Because the Public Plaza is for the benefit of the public and will be opened to the public, as well as owned, operated and maintained by a public entity, Donor has determined that the best proposed site (**Site**) for the public placement of the Clock would be in the Public Plaza, as shown on Exhibit B.

F. Donor desires to donate the Clock to Donee under the terms and conditions of both this Agreement and a bill of sale (**Bill of Sale**), in the form attached hereto as Exhibit C.

E. Donee desires to assume ownership, responsibility, and maintenance of the Clock upon transfer of the Clock to Donee and to publicly display the Clock within the Site for public enjoyment.

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NOW, THEREFORE, in consideration of the mutual promises, agreements, undertakings and covenants contained herein, the Parties hereto hereby agree by and among them as follows:

ARTICLE I: INCORPORATION OF RECITALS

The Recitals set forth above are hereby incorporated herein as if fully set forth as part of this Agreement.

ARTICLE II: SEVERANCE AND DONATION AGREEMENT

Donee agrees to acquire the Clock as its sole and separate personal property. Donor agrees to donate to Donee all of Donor's right, title and interest in and to the Clock as Donee's sole and separate property pursuant to the terms and conditions of this Agreement. The Parties agree that the Clock shall not be considered as a fixture on or to the property on which it is located.

ARTICLE III: INSTALLATION, MAINTENANCE, REPAIR, AND UTILITIES

A. Upon completion of the Site, and upon Donor's acquisition of the Clock and subsequent transfer of ownership of the same to Donee, Developer and Donee shall install the Clock on the Site in collaboration with Donor.

B. Donor shall be solely responsible for all costs associated with acquiring the Clock and shall be solely responsible for insuring the Clock until such time as Donee accepts transfer of the Clock from Donor. Following transfer of the Clock from Donor to Donee, Donee shall be responsible for maintenance and repair of the Clock. Such obligation shall include the obligation to insure the Clock. In the event of partial destruction of the Clock from any cause, Donee shall use its best efforts to restore the Clock to its pre-existing condition with insurance proceeds. In the event the Clock is damaged such that repair costs would exceed available insurance proceeds, or if the Clock is completely destroyed, none of the Parties shall have any obligation to repair or replace the Clock, and the Clock may be removed from the Site at Donee's expense.

C. Donee shall be solely responsible for the cost of all electricity used to operate the Clock.



D. Donee may not move the Clock from the Site without Donor's permission, except as provided in Article III, Section B, above.

ARTICLE IV: DISSOLUTION OF DONEE

In the event Donee or the City determines that it is in the best interest of Donee to dissolve as a public entity as provided by the Colorado Special District Act, Donee agrees to donate the Clock to the City and the City, by signature below, hereby acknowledges and agrees to accept ownership of the Clock and to be solely responsible for the operation and maintenance of the Clock and all other obligations of Donee as set forth in this Agreement.

ARTICLE V: MISCELLANEOUS PROVISIONS

A. Each individual executing this Agreement, for and on behalf of the Parties, hereby states that he or she has the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated and intended hereby.

B. This Agreement shall constitute the entire understanding and agreement of the Parties, and no assignment, amendment, or modification of the terms of this Agreement shall be valid or enforceable unless made in writing and executed by all Parties hereto.

C. The Parties specifically agree that all prior agreements among them, oral or written, regarding the donation of the Clock are hereby contained, set forth and merged in this Agreement.

D. This Agreement shall be binding upon the Parties hereto, their respective successors, grantees, and assigns.

E. Any and all notices or other contacts to be made under the terms of this Agreement shall be made by mailing said notice or contact to the other Parties at the other Parties' address as stated below, or at such other address specified in writing by any Party to the other Parties by United States First Class, Certified Mail, Return Receipt Requested:

Donor: Rotary Club of Loveland, Colorado
Attention: President or Director
PO Box 1144
Loveland, CO 80539-1114

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Donee: Foundry Loveland Metropolitan District
c/o Pinnacle Consulting Group Inc.
550 West Eisenhower Blvd.
Loveland, CO 80537

Developer: The Foundry Loveland, LLC
Attention: Jay Hardy
3528 Precision Drive, Suite 100,
Fort Collins, Colorado 80528

F. This Agreement may be recorded in the real estate records of Larimer County, Colorado, at the sole discretion and cost of the Donee.

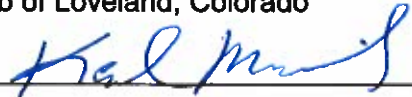
G. This Agreement is governed by, and construed in accordance with, the laws of the State of Colorado.

H. The Parties to this Agreement do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only among the Parties hereto and shall inure solely to the benefit of the Parties. The Parties intend and expressly agree that only the Parties shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement, or to bring any action arising out of the breach of this Agreement.

SIGNATURES BEGIN ON NEXT PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first above written.

DONOR
Rotary Club of Loveland, Colorado

by  8/29/2013

Printed Name: KARL MURIBY

Title: PRESIDENT, ROTARY CLUB OF LOVELAND

DONEE
Foundry Loveland Metropolitan District

by 

Printed Name: Shannon K. Stearman

Title: President

DEVELOPER
The Foundry Loveland, LLC

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, Manager

By: 
Kevin Brinkman, Manager

CITY ACKNOWLEDGEMENT AND ACCEPTANCE OF CLOCK

In the event Donee or the City determines that it is in the best interest of Donee to dissolve as a public entity as provided by the Colorado Special District Act, the City, by signature below, hereby acknowledges and agrees to accept transfer of ownership of the Clock from Donee to the City, and upon such transfer, the City hereby agrees to be solely responsible for the operation and maintenance of the Clock and all other obligations of Donee as set forth in this Agreement.

Notwithstanding the foregoing, All financial obligations of City 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 City, in its sole discretion.

CITY:

CITY OF LOVELAND,
a Colorado home rule municipality

By: Stephen Adams
City Manager

ATTEST:

Deputy City Clerk



APPROVED AS TO FORM:

Moses Garcia
City Attorney

EXHIBIT A
Depiction of Clock



EXHIBIT B
Depiction of Site



THE FOUNDRY



- Site

EXHIBIT C
Form Bill of Sale

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that Rotary Club of Loveland, Colorado, hereinafter referred to as "Donor," does grant and convey unto Foundry Loveland Metropolitan District, its successors and assigns, all of its right, title and interest in the clock depicted on Exhibit 1, attached hereto and incorporated herein (the "Clock") and all things of value, including all work product, both tangible and intangible, accruing from the provision of the Clock.

TO HAVE AND TO HOLD the same unto Foundry Loveland Metropolitan District, hereinafter referred to as "Donee," its successors and assigns forever; and Donor, its successors and assigns, shall warrant and defend the conveyance of said property unto Donee, and its successors or assigns, against all and every person or persons whomsoever, and warrants that the conveyance of the Clock to Donee, and its successors or assigns, is made free from any claim or demand whatever.

IN WITNESS WHEREOF, Donor, by and through its authorized representatives, hereby executes this Bill of Sale and sets its seal as of this ____ day of _____, 20__.

ROTARY CLUB OF LOVELAND, COLORADO.

By: _____
Its: _____

Subscribed and sworn to before me this ____ day of _____, 20__.

My commission expires: _____

Notary Public

EXHIBIT 1
To Bill of Sale
CLOCK

