

**OPERATIONS AND MAINTENANCE AGREEMENT
FOR THE FOUNDRY DEVELOPMENT PUBLIC PLAZA**

THIS OPERATIONS AND MAINTENANCE AGREEMENT FOR THE FOUNDRY DEVELOPMENT PUBLIC PLAZA (“Agreement”) is entered into and effective as of June 23, 2017, by and among the City of Loveland, a Colorado home rule municipality (the “City”), 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 (the “Developer”). The City, the District, and the Developer are each referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the City is a home rule municipality and political subdivision of the State of Colorado organized and existing under a home rule charter pursuant to article XX of the Colorado Constitution; and

WHEREAS, the District is a quasi-municipal corporation duly organized and existing as a metropolitan district pursuant to the Special District Act, sections 32-1-101 *et seq.*, C.R.S.; and

WHEREAS, pursuant to the Service Plan for Foundry Loveland Metropolitan District (the “Service Plan”), the District is responsible for assisting in the financing, construction, operations, and maintenance of public improvements for the redevelopment of certain real property in the downtown area of the City to be known as “The Foundry” (the “Project”); and

WHEREAS, the Project is described and depicted in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, pursuant to that certain Disposition and Redevelopment Agreement by and between the Developer and the City, dated as of December 13, 2016, as amended pursuant to the First Amendment to the Disposition and Redevelopment Agreement dated as of March 10, 2017 and the Second Amendment to the Disposition and Redevelopment Agreement dated as of April 26, 2017, and as further amended from time to time (collectively, the “DRA”), the Developer will finance, design, acquire, develop, construct and install the Project, subject to the reimbursement by the City of certain eligible costs; and

WHEREAS, a portion of the Project consist of public plazas, as depicted in Exhibit B, attached hereto and incorporated herein by this reference (collectively, the “Public Plaza”); and

WHEREAS, as contemplated in the DRA and the Service Plan, the District will own, operate, and maintain the Public Plaza and impose property taxes to provide for the operations and maintenance thereof; and

WHEREAS, as provided in the DRA, the City will pay or reimburse the Developer for certain eligible costs incurred in connection with the construction of the Public Plaza; and

WHEREAS, the City has issued certain Bonds (as defined in the DRA) to finance the costs of the eligible improvements in accordance with the DRA, and the interest on such Bonds is excludable from gross income under federal income tax laws pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Tax Code”); and

WHEREAS, pursuant to Section 19.2 of the DRA, the District, the City, and the Developer will jointly decide and coordinate the programming, allowed uses, and general operations of the Public Plaza pursuant to a separate agreement; and

WHEREAS, the Parties desire to set forth their agreement regarding the general operations and maintenance of the Public Plaza and to identify and provide for funding to pay the costs thereof.

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

A. Public Plaza.

1. Operations and Maintenance. The District will own and be responsible for the general operations and maintenance of the Public Plaza, including the walkways identified in Exhibit B. Excluding the walkways identified in Exhibit B, the City shall maintain all streets, sidewalks and public rights of way in and adjacent to the Public Plaza following dedication to the City.

a. Operations Responsibilities. The District will be responsible for the general operations of the Public Plaza, including, without limitation, administration, record keeping, Maintenance Services (as defined below), collection of rents, fees, rates, tolls, and charges, insurance, scheduling, and event management. The District may establish rules and regulations concerning the Public Plaza.

b. Maintenance Responsibilities. The District will perform, or cause to be performed, Maintenance Services for the Public Plaza. For purposes of this Agreement, "Maintenance Services" will consist of furnishing, or causing to be furnished, all labor, materials, equipment, permits and accessories necessary to maintain the Public Plaza in good condition and repair, clean, and free of trash and hazards to persons using the Public Plaza, including major repair and replacement as may be necessary, and providing for landscaping, irrigation, surface areas and walkways, signs, lighting, snow removal, and trash removal.

2. Annual Meeting. No later than July 31 annually, the Parties will meet to jointly decide and coordinate with respect to the programming and permitted uses for the Public Plaza, the City Contribution (defined in Section A.5.b. below), and such other matters as may be necessary or desirable for the upcoming year (the "Annual Meeting"). The Parties will work to finalize any preliminary plans established at the Annual Meeting no later than September 30 of the same year. Each Party will be responsible to implement any planned programming and events assigned to such Party. Unless otherwise agreed, the District will oversee coordination and scheduling for final programming and permitted uses.

3. District Agreements. The District may enter into agreements with third-party entities for the management, operations, and maintenance of the Public Plaza. The District may enter into license and listing agreements with public or private entities for purposes of leasing any portion of the Public Plaza for any programming and/or permitted uses, as the same are determined by the Parties at the Annual Meeting. Notwithstanding the foregoing, to the extent that any tax-exempt Bonds (as defined in the DRA) have been issued and remain outstanding, and a portion of the proceeds thereof have been used to finance all or a portion of the costs of constructing the Public Plaza, the District shall not enter into any agreements that would cause the interest on any such Bonds to lose its exclusion from federal income taxes under the Tax Code. So long as any such tax-

exempt Bonds remain outstanding, prior to the execution and delivery of any proposed agreement relating to the management, operations, maintenance, licensing or leasing of the Public Plaza, the District shall provide the City with a copy of the proposed agreement and allow the City to consult with legal counsel with respect to the impact of the proposed agreement on the tax-exempt status of interest on any such outstanding tax-exempt Bonds, and the District shall consult with legal counsel with respect to the same.

4. Fees, Rates, Tolls, and Charges. The Board of Directors of the District may establish, revise, impose, and collect fees, rates, tolls, and charges for services, programs, and/or facilities furnished by the District with respect to the Public Plaza. Any such fees, rates, tolls, and charges shall be reasonably related to the overall cost of the services, programs, and/or facilities for which they are imposed.

5. Funding Contributions. The District and the City will contribute funds to pay the costs associated with the administration, operations, and maintenance of the Public Plaza, as follows:

a. District O&M Mill Levy. The District will impose a property tax levy in the amount of five (5) mills for the purpose of paying the administrative, operations, and maintenance expenses of the Public Plaza (the “District O&M Mill Levy”). The District O&M Mill Levy may be adjusted as set forth in the Service Plan to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to the extent possible, the revenue produced by such District O&M Mill Levy is neither diminished nor enhanced as a result of such changes. The District’s obligation to impose the District O&M Mill Levy is a multiple-year fiscal obligation of the District, authorized by the electors of the District at an election held on November 8, 2017, and is not subject to annual appropriation.

b. City Contribution. The City will contribute funds in an amount determined at the Annual Meeting to assist in the operations costs of the Public Plaza (the “City Contribution”). The City will remit the City Contribution to the District no later than September 30 annually. Notwithstanding any provision to the contrary contained herein, the City Contribution shall be subject to annual appropriation by the City Council. In the event that the City Council does not appropriate the City Contribution in any given year, this shall not constitute a default by the City hereunder.

6. Loveland Downtown Partnership Participation. The Parties anticipate involvement in the Project, financial or otherwise, from the Loveland Downtown Partnership, a Colorado nonprofit corporation (the “Downtown Partnership”). A separate agreement between or among the Downtown Partnership and one or more of the Parties is anticipated and will address the Downtown Partnership’s involvement in the Project.

7. Budget. As part of the District’s annual budget process, the District will prepare and submit to the City, no later than October 15 of each year, a set of preliminary budget documents for the Public Plaza for the forthcoming budget year. The preliminary budget documents will set forth the estimated operating, maintenance, and administration costs of the Public Plaza for the forthcoming budget year and include revenues from the District O&M Mill Levy, the City Contribution, and any fees, rates, tolls, and charges. On or before November 15, the City shall either approve the preliminary budget documents (in which case the preliminary budget documents shall become final), or propose in writing to the District additions to and/or deletions from the preliminary budget documents. If the City does not approve the preliminary budget documents or provide written comments by the stated deadline, the right to do so will be deemed waived. The

District shall review any written comments provided by the City and, in its discretion, prepare revisions to the preliminary budget documents. The District will finalize the preliminary budget documents by no later than November 25 annually.

B. General Terms and Conditions.

1. Events of Default. The failure to perform or observe any covenant, agreement, or condition in this Agreement and to cure such failure within thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party shall constitute an event of default hereunder. If such default is not of a type that can be cured within the thirty (30) day period, and the defaulting Party gives written notice to the non-defaulting Party or Parties within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time, given the nature of the default, to cure such default following the end of the thirty day period to cure, provided that such defaulting Party is at all times actively and diligently pursuing such cure in good faith.

2. Remedies. Upon the occurrence and continuation of an event of default hereunder, the non-defaulting Party may enforce the defaulting Party's obligations hereunder by an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus, or by an action to collect and enforce the payment of sums owing hereunder. In the event of any litigation or other proceedings to enforce any of the terms, covenants, or conditions herein, the prevailing party in such litigation or other proceeding may obtain, as part of its judgment or award, its reasonable attorneys' fees and costs. No delay or omission of any Party to exercise any right or power accruing upon any event of default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such event of default, or acquiescence therein.

3. Term: Termination. This Agreement shall continue in full force and effect unless terminated by the written agreement of the Parties.

4. Notices. All notices, demands, requests or other communications shall be in writing and shall be deemed given when given personally or one business day after being sent by e-mail, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

To the District: Foundry Loveland Metropolitan District
c/o Pinnacle Consulting Group, Inc.
550 W. Eisenhower Boulevard
Loveland, CO 80537
Attn: Tom Flock, District Manager
Email: tomf@pinnacleconsultinggroup.com

With a copy to: Icenogle Seaver Pogue, P.C.
4725 S. Monaco St., Suite 360
Denver, Colorado 80237
Attn: Alan D. Pogue
E-mail: APogue@ISP-law.com

To the City: City Manager
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537
Email: Steve.Adams@cityofloveland.org

With a copy to: City Attorney
City of Loveland 500 East Third Street, Suite 330
Loveland, CO 80537
Email: Moses.Garcia@cityofloveland.org_____

To the Developer: The Foundry Loveland, LLC
c/o Brinkman Entity Management, LLC
3528 Precision Drive, Suite 100
Fort Collins, CO 80528
Email: jay.hardy@brinkmanpartners.com

5. Relationship of Parties. This Agreement does not and shall not be construed as creating a joint venture, partnership, or employer-employee relationship between the Parties. The Parties intend that this Agreement be interpreted as creating only an ordinary contractual relationship between them, without any fiduciary or other special duties. No Party shall, with respect to any activity or obligation described herein, be considered an agent or employee of any other Party.

6. Governmental Immunity. Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege, or protection afforded to the City, the District, and their respective counselors, directors, officers, employees, servants, agents, and authorized volunteers, pursuant to the Colorado Governmental Immunity Act, section 24-10-101, *et seq.*, C.R.S.

7. Annual Appropriation. The City's obligation with respect to the City Contribution, or any other amounts payable by the City hereunder, is subject to annual appropriation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of Article X, Section 20(4) of the Colorado constitution or a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year.

8. Binding Effect; Third-Party Beneficiaries. The terms, conditions, and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns. This Agreement is entered into for the sole benefit of the Parties, and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under, or to this Agreement.

9. Assignment. This Agreement may not be assigned in whole or in part by any Party without the prior written consent of all the other Parties. Any attempted assignment without the required consent shall be deemed void and of no force and effect.

10. Amendment. Except as provided in the following sentence, this Agreement may be modified or amended only by an instrument in writing signed by the City, the District, and the Developer.

11. Applicable Laws. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for the resolution of any dispute arising hereunder shall be in the district court of Larimer County, Colorado.

12. Severability. If any clause or provision of this 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 Agreement as a whole, but shall be severed herefrom, leaving the remaining Agreement intact and enforceable.

13. Headings. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to construe the provisions hereof.

14. Entire Agreement. This Agreement constitutes the entire, integrated agreement between the Parties 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 Agreement shall become effective upon the date and year first above written.

15. Counterparts. This 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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.]

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

CITY:

CITY OF LOVELAND, a Colorado home rule municipality

By: *Red Williams*
Acting City Manager

ATTEST:

[Signature]
Acting City Clerk



APPROVED AS TO FORM:

Carlos Jarama
Asst. City Attorney

DISTRICT:

FOUNDRY LOVELAND METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

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

CITY:

CITY OF LOVELAND, a Colorado home rule municipality

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DISTRICT:

**FOUNDRY LOVELAND
METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado

SK Stearman
By: Shannon K. Stearman
Its: President

ATTEST:

Rachael Jeane
By: Rachael Jeane
Its: Secretary

DEVELOPER:

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

EXHIBIT A
OPERATIONS AND MAINTENANCE AGREEMENT
FOR THE FOUNDRY DEVELOPMENT PUBLIC PLAZA

General Description & Depiction of Project

The Project is a high density, mixed use redevelopment intended to bring additional day and night time users to the Downtown area. Generally, the Project will include:

1. 625 seat first run movie theater
2. 52,590 square feet of office or hotel
3. 155 residential units
4. 14,000 square feet of retail/food & beverage/service uses
5. Parking Structure with minimum of 460 parking spaces
6. Two Public plaza, subject to final development plan
7. Improvements to alleyway and streetscapes immediately adjacent to the project area.

EXHIBIT A (CONT.)

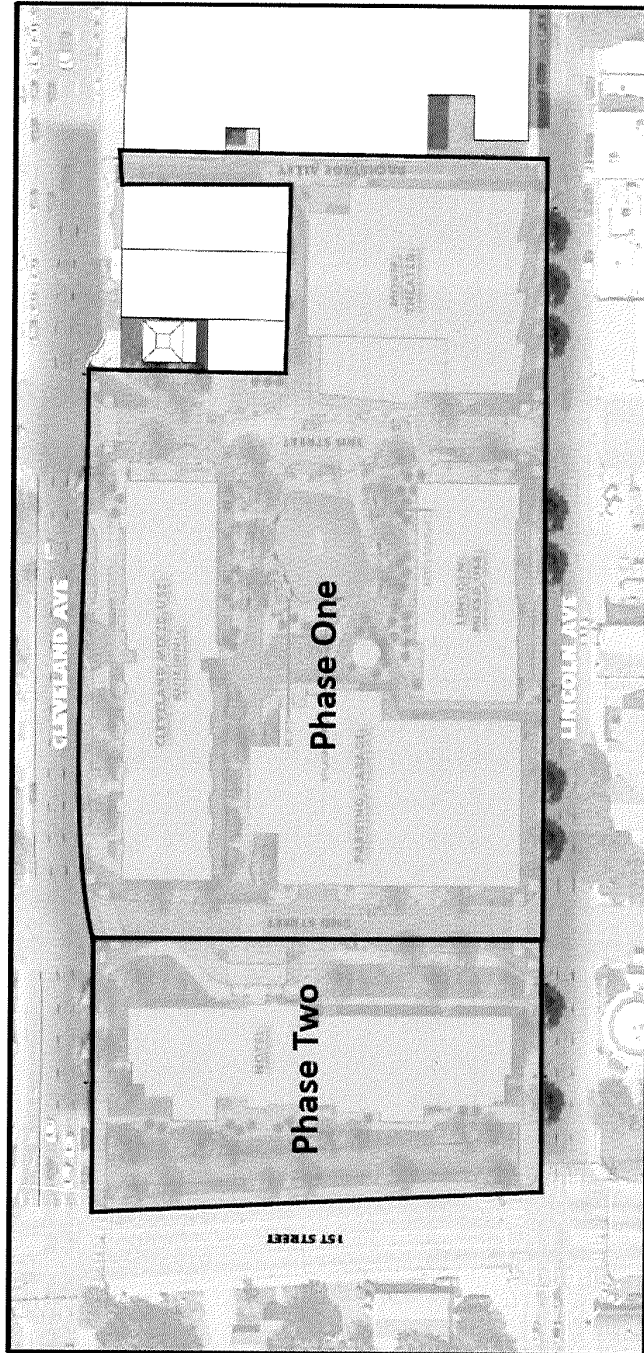
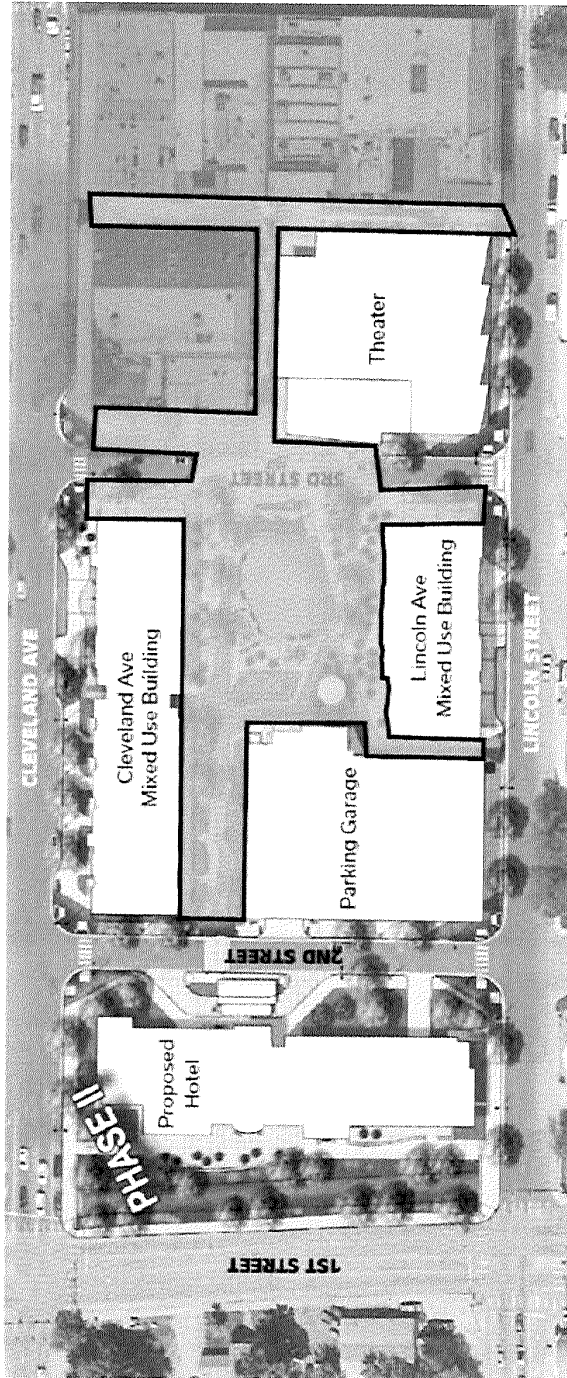


EXHIBIT B (CONT.)



▭ - Plaza Area Maintained by Foundry Loveland Metropolitan District