

EXECUTION COPY

DISPOSITION AND REDEVELOPMENT AGREEMENT

Between

City of Loveland, Colorado

and

The Foundry Loveland, LLC

Dated December 13, 2016

DISPOSITION AND REDEVELOPMENT AGREEMENT

THIS DISPOSITION AND REDEVELOPMENT AGREEMENT (this "Agreement") is entered into to be effective as of December 13, 2016 (the "Effective Date"), between the CITY OF LOVELAND, COLORADO, a Colorado home rule municipality (the "City") and The Foundry Loveland, LLC, a Colorado limited liability company (the "Developer"). The City and the Developer shall be collectively referred to hereafter as "Parties."

RECITALS:

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

WHEREAS, the City is the owner of certain real property located in the City between East 1st Street and East 4th Street, and between North Cleveland Avenue and North Lincoln Avenue, which is generally depicted on Exhibit A attached hereto and incorporated herein by this reference, and the Developer is the owner of 130 North Cleveland Avenue which was previously conveyed by the City to the Developer (collectively, the "Site"); and

WHEREAS, pursuant to a competitive bidding procedure established by the City, the Developer's affiliate, Brinkman Development, LLC submitted a proposal dated November 13, 2015 concerning the redevelopment of the Site; and

WHEREAS, the City and the Developer entered into that certain Exclusive Negotiation Agreement dated February 25, 2016, as amended (the "ENA") relating to the redevelopment of the Site; and

WHEREAS, pursuant to the ENA, the City and the Developer have subsequently agreed upon the scope and nature of the redevelopment project to be constructed by Developer on the Site, which is more fully described and depicted on Exhibit B attached and incorporated by this reference (the "Project"); and

WHEREAS, the City has determined that development of the Project on the Site will eliminate and prevent the growth of blighted areas within the downtown area of the City which constitute economic and social liabilities to the community, will prevent further physical and economic deterioration within the City, by stimulating redevelopment of downtown Loveland through the attraction of capital investment and assisting in the expansion and retention of existing business, will improve the overall appearance, condition and function of the downtown area and encourage a variety of uses compatible with the artistic and cultural community, will promote the historic, artistic and cultural elements of the downtown area, and will encourage pedestrian traffic and security, thereby serving the public interests of the City and the citizens of Loveland; and

WHEREAS, the parties have agreed that the City will retain a portion of the Site, as further set forth in Exhibit A hereto and designated the "City Parcel" (the "City Parcel") on which the portion of the Project consisting of the Parking Facility (hereinafter defined) will be constructed by the Developer, subject to the terms and provisions of this Agreement; and

WHEREAS, the parties have agreed that the City will convey to the Developer that portion of the Site that is designated in Exhibit A as the “Developer Parcel” (the “Developer Parcel”); and

WHEREAS, the Developer has agreed to acquire, develop, construct and install the Project on the Site; and

WHEREAS, the Parties desire to set forth their agreement regarding the terms and conditions upon which the City will convey the Developer Parcel to the Developer, the scope and design of the Project that will be constructed by the Developer on the Site, the incentives to be provided by the City to the Developer in connection with such redevelopment, and the Developer’s undertaking to redevelop the Site and complete the Project.

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

1. Definitions. In this Agreement capitalized terms have the following meanings:

“130 North Cleveland Avenue” means that portion of the Site generally depicted on Exhibit A which is designated as 130 North Cleveland that was previously conveyed by the City to the Developer.

“Act” means the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31 of the Colorado Revised Statutes.

“Additional Earnest Money” means the additional earnest money, if any, to be deposited by the Developer with the City in connection with each extension of the Extended Entitlement Period, as set forth in Section 6.2 hereof, and each extension of the Construction Drawings Submission Deadline, as set forth in Section 20.2 hereof.

“Add-On PIF” means the public improvement fee in the minimum amount of 1.00% that will be imposed by the Developer on retail sales occurring on the Site that are subject to the municipal sales tax imposed in accordance with the City Code, as further set forth in the Add-On PIF Covenant. No Add-On PIF shall be imposed on the sale of Movie Theater tickets.

“Add-On PIF Collection Agent” means the entity to be engaged by Developer as the collecting agent for collection, disbursement and accounting of the Add-On PIF Revenues pursuant to the Add-On PIF Collection Services Agreement.

“Add-On PIF Collection Services Agreement” means an agreement pursuant to which the Add-On PIF Collection Agent will collect, disburse and account for the Add-On PIF Revenues in accordance with the terms and provisions of this Agreement and the Add-On PIF Covenant.

“Add-On PIF Covenant” means a declaration of covenants by Developer imposing and implementing the Add-On PIF.

“Add-On PIF Revenues” means the revenues generated by the Add-On PIF.

“Agreement” means this Disposition and Redevelopment Agreement, as it may be amended or supplemented in writing. References to sections or exhibits are to this Agreement unless otherwise qualified. All exhibits and the above stated recitals are hereby incorporated into this Agreement by this reference.

“Authority” means the Loveland Urban Renewal Authority, a body corporate and politic of the State of Colorado duly organized and existing as an urban renewal authority under the laws of the State.

“Bond Documents” means, collectively, the documents pursuant to which the Bonds are issued.

“Bond Trustee” means the trustee for the Bonds pursuant to the Bond Documents.

“Bonds” means any bonds, certificates of participation, securities or other obligations issued or incurred by the City or the Authority to finance or refinance all or a portion of the Eligible Costs in accordance with the terms and provisions of this Agreement, including any bonds, certificates of participation, securities or other obligations or securities issued by the City or the Authority to refund any such Bonds.

“Cap Amount” means an amount equal to \$17,676,367, subject to adjustment as provided in Section 15 hereof, plus Eligible Accrued Interest, if any, and Eligible Financing Costs, which is the maximum amount of Eligible Costs that shall be paid or reimbursed by the City. The Cap Amount shall be allocated as follows: \$13,676,367 shall be allocated to the Parking Facility Costs and \$4,000,000 shall be allocated to the remaining Eligible Public Improvements that do not include Parking Facility Costs.

“City” means the City of Loveland, Colorado, a home rule municipal corporation.

“City Manager” means the City Manager of the City.

“City Parcel” means that portion of the Site generally depicted on Exhibit A that is owned by the City on which the Parking Facility will be constructed.

“Commence Construction” means, except as otherwise provided in this Agreement, the commencement by the Developer of actual physical work, including, but not limited to, site grading and construction, on the Property as required to carry out the Project.

“Council” means the City Council of the City.

“Deed” means the special warranty deed conveying the Developer Parcel to the Developer, which shall be in substantially the form set forth in Exhibit C.

“Developer” means The Foundry Loveland, LLC, a Colorado limited liability company, and any successors and assigns approved in accordance with this Agreement.

“Developer Advances” means amounts advanced by the Developer, with the prior written consent of the City, to pay the costs of acquiring, constructing or installing Eligible Public

Improvements. If a Developer Advance is not approved by the City, the Developer shall not be entitled to reimbursement from the City for any interest accruing on such Developer Advance. The Developer is not obligated hereunder to make any Developer Advances to finance Eligible Costs, provided, however, that the Developer has agreed to finance all costs of acquiring, constructing or installing Eligible Public Improvements to the extent such costs exceed the Cap Amount.

“Developer Improvements” means those Project improvements that do not constitute Eligible Public Improvements or that are identified as “Developer Improvements” in Exhibit B attached hereto.

“Developer Parcel” means that portion of the Site generally depicted on Exhibit A that will be conveyed by the City to the Developer in accordance with the terms and provisions of this Agreement. After the conveyance of the Developer Parcel to the Developer, all further references herein to the Developer Parcel shall also be deemed to include 130 North Cleveland Avenue, which was previously conveyed by the City to the Developer in connection with the redevelopment of the Project.

“Developer Pledged Revenues” means, collectively: (a) the Add-On PIF Revenues; (b) Payments in Lieu of Taxes, if any; and (c) Phase Two Payments, if any.

“District” means the Foundry Loveland Metropolitan District, expected to be formed pursuant to Sections 32-1-101, et seq., C.R.S., and its successors and assigns. The boundaries of the District are expected to be the same as the boundaries of the Site.

“District Debt Service Mill Levy” means a property tax levy imposed by the District in a minimum amount of twenty-five (25) mills levied by the District on the taxable property of the District. The District Debt Service Mill Levy rate 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 Debt Service Mill Levy is neither diminished nor enhanced as a result of such changes.

“District O&M Mill Levy” means a property tax levy imposed by the District in a minimum amount of five (5) mills separate and apart from the District Debt Service Mill Levy, for the purpose of paying the administrative, operations and maintenance expenses of the District, including without limitation the maintenance expenses of the Public Plazas. 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.

“District Pledge Agreement” means an agreement between the City and the District pursuant to which the District agrees to impose the District Debt Service Mill Levy in accordance with the provisions of this Agreement, and (a) pledge the District Pledged Revenue to the payment of the debt service requirements on the Bonds, or (b) at the written direction of the City, remit all or a portion of the District Pledged Revenue to the City or its designee.

“District Pledged Revenue” means, collectively, (a) the District Property Tax Revenues, and (b) the District Specific Ownership Taxes.

“District Property Tax Revenues” means the property tax revenues produced by the District Debt Service Mill Levy.

“District Specific Ownership Taxes” means the specific ownership tax revenues received by the District in each year pursuant to § 42-3-107, C.R.S. that is attributable to the dollar amount of ad valorem taxes generated from the District Debt Service Mill Levy.

“Earnest Money Deposit” means an amount equal to \$10,000 which has been deposited by the Developer with the City prior to the Effective Date, plus any accrued interest thereon.

“Effective Date” means the date of this Agreement.

“Eligible Accrued Interest” means interest accrued on Developer Advances calculated as follows:

(a) If the Developer Advance is made from money that is not borrowed by the Developer, interest shall accrue at a simple per annum interest rate equal to the greater of (i) Prime plus 2%, or (ii) 6%.

(b) If the Developer Advance is made from money that is borrowed by the Developer, interest shall accrue at the actual rate of interest that the Developer is paying to the Developer’s lender under the applicable loan documents, plus 2%.

(c) Interest shall begin to accrue on the date of the Developer Advance.

“Eligible Costs” means the reasonable and customary expenditures for the design, acquisition, construction and installation of the Eligible Public Improvements, including without limitation, reasonable and customary soft costs and expenses related to the design, acquisition, construction and installation of the Eligible Public Improvements, subject to the Cap Amount and the limitations contained herein. Eligible Costs shall also include the payment of Eligible Accrued Interest, if any, and Eligible Financing Costs. Notwithstanding the foregoing, Eligible Costs shall not include the fees and expenses of attorneys for the Developer or the salaries or benefits of the employees of the Developer, and the City shall have no obligation to pay or reimburse any such fees, expenses, salaries or benefits.

“Eligible Financing Costs” means all reasonable costs of issuance incurred in connection with the issuance of the Bonds.

“Eligible Public Improvements” means the public improvements described in Exhibit D, as it may be amended from time to time in accordance with this Agreement, that are to be acquired, constructed or installed by the Developer as part of the Project. Exhibit D may only be amended with the prior written consent of the City Manager.

“ENA” means the Exclusive Negotiation Agreement dated February 25, 2016, as amended, between the City and the Developer.

“Force Majeure” means any delays in or failure of performance by any Party of its obligations under this Agreement as a result of acts of God; fires; floods; earthquake; strikes; labor disputes; regulation or order of civil or military authorities; or other causes, similar or dissimilar, which are beyond the control of such Party. Failure by the Developer to obtain funding for the Project shall not be considered to be Force Majeure.

“Lodger’s Fee” means, to the extent that a hotel is located on the Site, the lodger’s fee that will be imposed by the Developer on the purchase of lodging at such hotel located on the Site, at the rate of 1% of the purchase price paid or charged for purchasing such lodging. To the extent that a hotel is not located on the Site, all references herein to the Lodger’s Fee shall have no force and effect.

“Minimum District Property Tax Revenues” means the minimum amounts set forth in Exhibit E to this Agreement, which shall be the minimum amount of District Property Tax Revenues remitted to the City or its designee pursuant to the District Pledge Agreement beginning in 2028, or Payments in Lieu of Taxes will be required to be made, as further set forth in Section 18 of this Agreement.

“Minimum Property Tax Increment Revenues” means the minimum amounts set forth in Exhibit E to this Agreement, which shall be the minimum amount of Property Tax Increment Revenues that are attributed to the Project each year through 2027, or Payments in Lieu of Taxes will be required to be made, as further set forth in Section 18 of this Agreement.

“Movie Theater” means the component of the Project consisting of an approximately 625 seat, first run movie theater. For purposes of this Agreement, the Movie Theater shall be considered a first run movie theater if it primarily shows movies that are available for public viewing for the first time.

“Movie Theater Incentive” means the amount to be paid by the City to the Developer as an incentive to construct the Movie Theater, which incentive shall be subject to annual appropriation by the Council.

“Parking Facility” means a parking garage with not less than 460 parking spaces, which shall be owned by the City, which shall constitute an Eligible Public Improvement hereunder.

“Parking Facility Costs” means costs properly allocable to the construction of the Parking Facility, including without limitation, engineering, design, site preparation and construction of the Parking Facility.

“Payments in Lieu of Taxes” means payments required to be made by the Developer to the City pursuant to the provisions of Section 18 of this Agreement to the extent that Property Tax Increment Revenues generated by the Project are not credited to the Special Fund in each year in an amount at least equal to the Minimum Property Tax Increment Revenues.

“Phase One” means the first phase of the Project that consists of the development and construction of the Site generally north of 2nd Street, including without limitation, the Parking Facility, Movie Theater, Public Plaza, the mixed used building on Cleveland Avenue, the mixed use building on Lincoln Avenue, and the street and alley improvements on 2nd Street and 3rd

Street, as further set forth in Exhibit B hereto, but not including the development of the Phase Two Parcel as a hotel or office buildings (which shall constitute Phase Two of the Project).

“Phase Two” means the second, and final phase, of the Project that consists of the development of the Phase Two Parcel as a hotel or office buildings and the completion of the Public Plaza along the ditch on the south side of the property, as further set forth in Exhibit B hereto.

“Phase Two Parcel” means a portion of the Developer Parcel further described on Exhibit A on which Phase Two of the Project will be constructed. The Phase Two Parcel is also depicted as Block One in Exhibit A.

“Phase Two Payments” means the payments required to be made by the Developer in the amounts and subject to the conditions set forth in Section 13.6 hereof.

“Plan” and “Urban Renewal Plan” mean the Loveland Urban Renewal Plan dated October 1, 2002, adopted and approved by the City Council of the City, as amended, and as may hereinafter be amended from time to time.

“Prime” means the prime rate as published in the Wall Street Journal on the first business day of each calendar month, which shall be adjusted on a current monthly basis as of the first business day of each calendar month.

“Project” means the high density mixed use development of the Site, as further set forth on Exhibit B hereto. The Project consists of Phase One and Phase Two.

“Property Tax Base Amount” means the assessed value of property subject to ad valorem property taxes in the Urban Renewal Area last certified prior to the effective date of the approval of the Plan. The Property Tax Base Amount and increment value shall be calculated and adjusted from time to time by the Larimer County Assessor in accordance with Section 31-25-107(9) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado.

“Property Tax Increment Revenues” means the annual ad valorem property tax revenue received by the Authority from the Larimer County Treasurer in excess of the amount produced by the levy of those taxing bodies that levy property taxes against the Property Tax Base Amount in the Urban Renewal Area in accordance with the Act and the regulations of the Property Tax Administrator of the State of Colorado, but not including any offsets collected by the Larimer County Treasurer for return of overpayments or any reserve funds retained by the Authority for such purposes in accordance with Sections 31-25-107(9)(a)(III) and (b) of the Act, and credited to the Special Fund.

“Public Plaza” means, collectively, those portions of the Project that are designated as public plazas in Exhibit B hereto, which are expected to be owned and maintained by the District.

“Required Closing Date” has the meaning set forth in Section 5.1 hereof.

“Service Plan” means the service plan for the District, as amended from time to time.

“Site” means the real property generally depicted on Exhibit A hereto, on which the Project shall be constructed.

“Special Fund” means the special fund defined in Section 107(9)(a)(II) of the Act.

“Surviving Obligations” means the waivers, releases, indemnity, document return, and other obligations of the Developer and the City that are stated herein to survive the termination of this Agreement.

“Urban Renewal Area” means the urban renewal area described in the Plan as the Urban Renewal Area for Downtown Loveland, within which the tax increment provisions of Section 31-25-107(9) of the Act apply.

“Use Taxes” means the use taxes imposed pursuant to Code Section 3.16.040 upon the construction and building materials used for the Project.

2. Purpose of this Agreement. The purpose of this Agreement is to further the goals of the Urban Renewal Plan and effectuate the redevelopment of the Site by providing for the following:

- (a) the conveyance of the Developer Parcel to the Developer;
- (b) the construction of the Project on the Site by the Developer, including the Developer Improvements and the Eligible Public Improvements;
- (c) the payment or reimbursement to the Developer by the City of the Eligible Costs relating to the acquisition, construction and installation of the Eligible Public Improvements, in an amount not exceeding the Cap Amount, subject to annual appropriation by the City;
- (d) a waiver of the Use Taxes relating to the Project; and
- (e) the payment of the Movie Theater Incentive by the City, subject to annual appropriation by the City.

3. Agreement to Convey Developer Parcel. In accordance with and subject to all the terms and conditions of this Agreement, the City agrees to convey the Developer Parcel to the Developer, and Developer agrees to accept the Developer Parcel from City, on the Closing Date (defined below), together with any City water taps currently issued and appurtenant to the Developer Parcel and any related accrued water tap credits.

4. Consideration for Conveyance of Developer Parcel.

4.1 Consideration. The City acknowledges that it has bargained for and induced the Developer to enter into this Agreement because of the public benefits that the City will derive from the redevelopment of the Property, with the understanding that the Developer will expend significant funds and resources in undertaking the redevelopment of the Project. The Council has therefore determined that the redevelopment and construction of the Project on the Site will serve a public purpose and result in public benefits to the City and the citizens thereof,

which will constitute adequate consideration for the conveyance of the Developer Parcel to the Developer, and that no additional consideration or purchase price will be required. Notwithstanding the foregoing, however, the Developer has agreed to pay a portion of the closing costs in connection with the conveyance of the Developer Parcel, as set forth below.

4.2 Earnest Money Deposit. The Developer has delivered the Earnest Money Deposit to the City. Except as otherwise provided herein, upon conveyance of the Developer Parcel from the City to the Developer in accordance with the terms and provisions of this Agreement, the Earnest Money Deposit and all accrued interest thereon shall, at the option of the Developer, either be returned to the Developer and/or applied to the closing costs to be paid by the Developer. In the event that the conditions precedent set forth in this Agreement for conveying the Developer Parcel are not met by the Developer, and as a result thereof, the Developer Parcel is not conveyed to the Developer, the Earnest Money Deposit shall be applied as set forth in Section 8.3 hereof.

4.3 Interest on Earnest Money Deposit. The Earnest Money Deposit shall be held by the City in an interest-bearing account in accordance with the provisions of this Agreement.

5. Closing and Pre-Closing Matters Relating to Conveyance of Developer Parcel

5.1 Closing. The conveyance of the Developer Parcel as contemplated by this Agreement, including but not limited to the delivery of the Deed (defined below), and the completion of the other matters required by this Agreement to be done contemporaneously (the "Closing") shall occur at the offices of Land Title, located at 345 E 27th Street, Loveland, Colorado (the "Title Company"), and the Closing shall occur and be completed no later than 5:00 p.m. on the last to occur of: (i) the thirtieth (30th) day after Developer's receipt of the Development Approvals for the Project as set forth in Section 6.2; or (ii) the fifteenth (15th) day after the building permit has been issued by the City as contemplated by Section 20.3; or (iii) such later date as has been agreed to in writing by the Developer and the City (the "Required Closing Date"). The date on which the Closing actually occurs shall be referred to herein as the "Closing Date".

5.2 Pre-Closing Matters. Until the earlier of the Closing Date or the termination of this Agreement, City agrees as follows: (i) to maintain any insurance coverage relating to the Site that is currently maintained by City, in the amounts and coverages currently in effect; (ii) to maintain the Site in its present condition ("AS IS"), subject to normal wear and tear and with acts of God, casualty and condemnation excepted, provided that the City shall be allowed to continue to complete the demolition and abatement of the Site; (iii) to notify Developer promptly upon receiving notice of any (a) fact or event that could make any of the representations or warranties of City contained in Section 22 of this Agreement untrue or misleading in any material respect, (b) pending or threatened litigation that materially and adversely affects the Site or that would materially and adversely affect the transaction contemplated hereby or the Developer's intended use of the Site, or (c) material damage or destruction (excluding normal wear and tear) to the Site or any part thereof; (iv) not to intentionally do anything or knowingly permit anything to be done that would materially and adversely affect the status of title to the Developer Parcel as shown in the Title Commitment

(defined below), without the prior written consent of Developer, which consent shall not be unreasonably withheld; (v) to deliver to Developer copies of all notices relating to the physical condition of the Site that are received by City after the Effective Date from any governmental agency; (vi) to notify Developer promptly upon receiving actual notice of any spilling, leaking, disposing, discharging, or migration of hazardous or toxic materials on the Site in violation of applicable law occurring after the Effective Date; and (vii) not to enter into any leases, occupancy agreements, or service or other contracts affecting the Site that would remain in effect after the Closing without in each case obtaining Developer's prior written consent thereto, which consent shall not be unreasonably withheld.

5.3 Site Condition; Abatement and Demolition. The Parties acknowledge that the City has incurred costs to abate environmental conditions and to demolish all structures on the Site in an approximate amount of \$831,000, and that the Developer shall have no obligation or liability to reimburse the City for these costs. The City shall provide all environmental documentation relating to the Site to the Developer upon the execution of this Agreement and shall provide the Developer with any supplemental environmental documentation relating to the Site when received by the City. The City shall retain title to the City Parcel and shall retain the Environmental Liability policy currently in place for the City Parcel. The Developer shall obtain a new Environmental Liability policy for the Developer Parcel, which policy shall be for at least ten years, in the minimum amount of \$10,000,000 with a maximum deductible of \$100,000 and, subject to annual appropriation, the City shall pay the reasonable costs of the premiums on such Environmental Liability policy.

5.4 City's Financing Plan for Eligible Improvements. The City agrees that within 60 calendar days after the Effective Date that it shall deliver a written financing plan to the Developer setting forth the City's plan (the "City Financing Plan") to pay or reimburse the Developer for Eligible Costs, up to the Cap Amount, in accordance with the terms and provisions of this Agreement. The City Financing Plan shall set forth the anticipated revenue sources from which the City expects to pay the Eligible Costs. The Developer shall have seven (7) Business Days following the delivery of the City Financing Plan to provide the City with any written objections to the City Financing Plan. If the Developer has not provided such written objections to the City Financing Plan within such time period, then the Developer shall be deemed to have waived any rights it has to object to the City Financing Plan. If the Developer objects to the City Financing Plan, the City shall have seven (7) Business Days to provide written notice to the Developer as to whether (a) it will remedy any such objections on or prior to the Closing Date or (b) it will not remedy any such objections. In the event that the City does not respond to the Developer's written objections within this time period, the City shall be deemed to have elected not to remedy the Developer's objections to the City Financing Plan. In the event that the City notifies the Developer that it will not remedy the Developer's objections, or the City has been deemed to make such election, then the Developer shall have seven (7) Business Days to terminate this Agreement by written notice to the City. If the Developer does not terminate this Agreement within such time period, then the Developer shall have waived any rights it has to terminate this Agreement for failure by the City to remedy the Developer's objections to the City Financing Plan. Notwithstanding the foregoing or any provision to the contrary contained herein, the Parties acknowledge and agree that (a) the City Financing Plan shall not be binding on the City, and (b) the City shall have sole and absolute discretion to determine the revenues that will be utilized by the City to pay or reimburse the Developer for Eligible Costs.

6. Inspection of Site.

6.1 Site Information. The City has provided Developer with electronic or paper copies of all of the information described on attached Exhibit F relating to the Site (collectively, the "Site Information"). Such Site Information has been provided with respect to both the City Parcel and the Developer Parcel in recognition that the Developer has agreed to construct the Project on both the City Parcel and the Developer Parcel. The City has not undertaken any independent investigation as to the truth or accuracy of the Site Information and is providing the same solely as an accommodation to Developer; provided, however, that to the actual knowledge of the individuals in the City who have been working on the demolition and abatement of the Site, the Site Information does not contain any material misstatements or omit to state any material information. In the event this Agreement is terminated or Developer fails to perform hereunder, Developer shall promptly return to City all Site Information, Additional Information (as defined below) and any other statements, documents, schedules, exhibits and other written information obtained from City in connection with this Agreement or the transactions contemplated herein. Following the Closing, Developer shall be entitled to retain and employ all Site Information and Additional Information with respect to the Site as reasonably required in connection with the redevelopment of the Site.

6.2 Due Diligence. Developer shall have until 5:00 p.m. Mountain Time on that date which is sixty (60) calendar days after the Effective Date (the "Due Diligence Period") in which to examine, inspect, and investigate the Site and the Site Information and, in Developer's sole and absolute judgment and discretion, to determine whether the same is satisfactory to Developer and suitable for redevelopment and construction of the Project. In the event that the Developer determines that the Site is not satisfactory to Developer and suitable for redevelopment and construction of the Project, the Developer may on or before 5:00 p.m. Mountain Time on the last day of the Due Diligence Period either (i) terminate this Agreement pursuant to this Section 6.2 by giving written notice of termination (the "Due Diligence Termination Notice") to City; or (ii) object by providing written notice of objections delivered to the City (the "Due Diligence Objections"). If Developer timely notifies the City of any Due Diligence Objections, then the City may notify Developer in writing within seven (7) Business Days after City's receipt of such notification that: (i) the City will remedy such objections on or before the Closing Date, or (ii) the City will not remedy such objections. If the City does not address any Due Diligence Objections in any notice, or does not give a timely notice as to any Due Diligence Objections, this shall constitute City's election to not remedy any such objections. If the City does not provide Developer with timely written notice that it will remedy all Due Diligence Objections, then Developer may, as its sole and exclusive remedy, terminate this Agreement by giving City written notice of such termination within five (5) Business Days after the expiration of the City's 7-Business Day notice period. This Agreement shall continue in full force and effect if Developer does not give a Due Diligence Termination Notice on or before 5:00 p.m. Mountain Time on the last day of the Due Diligence Period, or if Developer does not provide written notice of termination within the five (5) Business Days after the expiration of City's 7-Business Day notice period, as set forth above. Developer's failure to provide such notice shall constitute a waiver of Developer's right to terminate this Agreement resulting from the Site Information, the condition of the Site and the suitability of the Site for the Project, and the financial feasibility of the Project, except as otherwise provided for herein.

In the event that the Developer does not terminate this Agreement pursuant to this Section 6.2, the Developer shall, in working together with the City, within 180 days from the end of the Due Diligence Period, subject to extension below (“Entitlement Period”), (a) obtain such commitments as may be acceptable to Developer for (i) design, development, and construction services for completion of the Project, and (ii) financing the cost of the Project, net of the Eligible Costs (up to the Cap Amount) to be paid or reimbursed by the City; and (b) obtain all land use and development plan approvals, including but not limited to proper zoning approvals, the Plat Approval, architectural/aesthetic/visual approvals, site plan approvals, variance of use and/or development standards, environmental permits, from the City’s Development Services Department, or other appropriate governmental authority, as necessary to permit construction of the Project in accordance with this Agreement. The preceding (a) and (b) are referred to as the “Development Approvals.” If Developer has not obtained Development Approvals satisfactory to Developer then on or before the expiration of the Entitlement Period, Developer may either: (i) terminate this Agreement by providing written notice of the same to the City; or (ii) elect to extend the Entitlement Period for up to two (2) additional sixty (60) day period(s) (each an “Extended Entitlement Period”). In the event Developer elects to exercise the Extended Entitlement Periods, Developer shall provide City with written notice of its election on or before the expiration of the Entitlement Period or current Extended Entitlement Period and deposit an additional Ten Thousand and 00/100 Dollars (\$10,000.00) for each extension with the City within one (1) Business Day after said extension as Additional Earnest Money. Said Additional Earnest Money shall be applied in the same manner and for the same purposes as the original Earnest Money deposited with the City.

The Developer and the City shall obtain all plat approvals necessary for the legal conveyance of the Developer Parcel from City to Developer, and the City’s retention of the City Parcel at Closing (the “Plat Approval”). The Developer and the City shall cause the Site to be created as separate legal lots (and Developer may provide for as many separate legal lots within the Developer Parcel as is reasonably necessary for the Developer’s intended use of the Project), and shall prepare all documents, surveys and/or site plans (“Plat”) necessary to obtain Plat Approval. The Plat shall dedicate and convey all real estate, easements and rights-of-way to the applicable governmental authority or utility as shall be necessary or required. The Plat shall be recorded on or before Closing. The parties agree and acknowledge that it is the intention of the parties that the Plat will designate the City Parcel and the Developer Parcel in substantially the same manner as set forth on Exhibit A-1 and A-3, unless otherwise agreed in writing by the parties.

In the event Developer elects to terminate this Agreement pursuant to this Section 6.2, promptly upon such termination, (i) Developer shall deliver to City the Site Information and all information, materials and data that Developer or Developer’s Agents (defined below) discover, obtain or generate in connection with or resulting from Developer’s investigation of the Site (collectively, the “Additional Information”); however, such Additional Information shall not include internal analyses produced by Developer or Developer’s Agents of a proprietary nature including financial or cost projections or items that are reasonably subject to the attorney-client privilege, and (ii) the Earnest Money Deposit shall be remitted to Developer, and the Additional Earnest Money shall be retained by the City, whereupon each of the Parties shall not have any further obligation or liability to the other Parties, save and except for the Surviving Obligations. Prior to the delivery of the Additional Information to the City pursuant to this Agreement, the

Developer will not have undertaken any independent investigation as to the truth or accuracy of any third party reports included in such Additional Information and is providing the same solely as an accommodation to City; provided, however, that such delivery of the Additional Information to the City shall constitute a representation and warranty by the Developer that to the actual knowledge of the Developers' employees who have been working on the Project, the Additional Information does not contain any material misstatements or omit to state any material information.

6.2.1 Developer, and Developer's agents, employees, representatives, consultants and contractors (collectively, "Developer's Agents"), shall have access to the Site at reasonable times (subject to City's prior approval of the specific time and activities to be conducted by Developer and Developer's Agents during such access, and City's security requirements) during the term of this Agreement for the purpose of conducting inspections, tests and sampling of the Site reasonably required by Developer (collectively, the "Inspections"). City shall have the right to have one or more of its employees or agents accompany Developer and Developer's Agents at all times while Developer and Developer's Agents are on the Site. Developer shall provide City with copies of any work plans for any testing or sampling the Developer wishes to conduct for City's prior written approval, which work plan City may modify, limit or disapprove in its sole but reasonable discretion. Developer shall also provide City with a certificate of insurance from Developer and Developers Agents inspecting the Site (from an insurance carrier reasonably acceptable to City) evidencing the existence of: (a) commercial general liability insurance, in an amount not less than One Million Dollars (US \$1,000,000.00) combined limits for any injuries, deaths or property damage sustained as a result of any one accident or occurrence; and (b) worker's compensation insurance with coverage required by Colorado law. The commercial general liability insurance shall name City as an additional insured. Additionally, Developer, on behalf of itself and Developer's Agents, hereby waives any claims against the Indemnitees (defined below) for any injury to persons or damage to property arising out of any Inspections, including, without limitation, any damage to the personal property, tools or equipment of Developer or Developer's Agents, all of which shall be brought onto the Site at the sole risk and responsibility of Developer and Developer's Agents, except that Developer, on behalf of itself and Developer's Agents do not waive any claims arising from the negligence, gross negligence or willful misconduct of the City or the Indemnitees.

6.2.2 Developer shall, at its sole cost and expense, comply with all applicable federal, state and local laws, rules, statutes, regulations, ordinances, or policies in conducting the Inspections. Developer shall keep the Site free and clear of any liens and shall hold harmless, protect, defend (with legal counsel acceptable to City, as the case may be) and indemnify the City and its officers, agents and employees (collectively, the "Indemnitees") from and against any liabilities, claims, demands, causes of action, losses, costs, damages, penalties, fines, taxes, remedial actions, removal and disposal costs, investigation and remedial costs and expenses (including, without limitation, attorney fees and expert and consultant fees), whether direct or indirect, known or unknown arising out of or relating to the work or activities conducted on the Site by Developer or Developer's Agents (collectively, "Claims"), including, without limitation, any Claims for: (i) any injuries to persons (including death) or damage to any property except that the foregoing indemnity shall not extend to any liabilities to the extent arising: (a) as a result of the mere discovery by Developer or Developer's Agents of a pre-

existing condition that has a deleterious effect on the Site; and (b) out of the negligence, gross negligence or willful misconduct of City or Indemnitees; and (ii) any mechanic's or other liens on the Site, by reason of or relating to the work or activities conducted on the Site by Developer or Developer's Agents. The foregoing provisions shall not be limited in any way by any other terms of this Agreement and shall survive the Closing and termination of this Agreement.

6.2.3 To the extent that Developer or Developer's Agents damage, soil, or disturb the Site or any improvements during their entry thereon, Developer shall, at its sole cost and expense, clean up, repair, and restore the Site and such improvements in whatever manner necessary after Developer's or Developer's Agents' entry thereon so that the Site and all improvements thereon shall be returned to the same condition that existed prior to Developer's or Developer's Agents' entry on the Site.

6.2.4 City shall promptly be provided with a copy of all Additional Information that Developer or Developer's Agents discover, obtain or generate in connection with or resulting from their Inspections and work under this Section 6.2.

6.2.5 The Parties acknowledge that in connection with the construction of the Project, that improvements will need to be made to the intersection at East 1st Street and Lincoln Avenue, and that the Parties have agreed to share the costs of such improvements. The City agrees that it will, at its sole cost and expense, design the required improvements and determine the estimated costs thereof and provide the Developer with the design plans and cost estimates so that the Parties may reach an agreement on the improvements to be constructed and the costs to be paid by each party in connection therewith. It is the Parties intention that the required improvements and the cost sharing agreement will be finalized during the Due Diligence Period. In the event the required improvements and cost sharing agreement are not agreed upon by the Parties, Developer may terminate this Agreement in accordance with Section 6.2.

7. Title and Survey.

7.1 Delivery of Title Commitment. Not later than twenty-one (21) calendar days after the Effective Date, City shall deliver to Developer a title commitment issued by the Title Company for the Developer Parcel for an ALTA 2006 Owner's form policy (the "Title Commitment") in an amount not less than \$4,664,048, which is the estimated fair market value of the Developer Parcel.

7.2 Title Review and Cure.

7.2.1 Developer shall review title to the Developer Parcel as disclosed by the Title Commitment. Developer shall have until 5:00 p.m. Mountain Time on the last day of the Due Diligence Period to object, in its sole and absolute discretion, by written notice of objections delivered to City (the "Title Objections"), to any title matters shown on the Title Commitment or matters disclosed on the ALTA-ACSM Urban Survey of the Developer Parcel (the "Survey") which the City at its sole cost and expense has caused to be prepared and provided to the Developer ("Survey Objections"). Developer's failure to provide written notice of Title Objections or Survey Objections to City on or before the expiration of the Due Diligence Period

shall constitute Developer's approval of the Title Commitment and the Survey. If Developer timely notifies City of any Title Objections or Survey Objections, then City may notify Developer in writing within seven (7) Business Days after City's receipt of such notification that: (i) City will remove the Title or Survey Objections on or before the Closing, or (ii) City will not remove any or certain specified Title or Survey Objections. City's failure to address any Title or Survey Objections in any notice, or failure to give a timely notice as to any Title or Survey Objections, shall constitute City's election not to remove such Title or Survey Objections.

7.2.2 If City does not provide Developer with timely written notice that it shall remove all Title and Survey Objections, then Developer may, as its sole and exclusive remedy, terminate this Agreement by giving City written notice of such termination within five (5) Business Days after the expiration of City's 7-Business Day notice period. Developer's failure to terminate this Agreement within such 5-Business Day period shall constitute Developer's waiver of all Title and Survey Objections. In the case of Developer's waiver (or deemed waiver) of Title and Survey Objections, City shall have no obligation to remove or otherwise address such Title or Survey Objections, and such Title and Survey Objections shall be deemed approved by the Developer. The matters shown by the Title Commitment and any encumbrances arising from the acts of Developer or Developer's Agents are collectively referred to herein as the "Permitted Exceptions". However, "Permitted Exceptions" shall not include Title or Survey Objections the City removes or agrees to remove. After the expiration of the Due Diligence Period, Developer may, at or prior to Closing, notify City in writing of any objection(s) to title exceptions raised by the Title Company after the expiration of the Due Diligence Period and prior to the Closing and not otherwise known to Developer prior to the expiration of the Due Diligence Period (the "Subsequent Title Defects Notice"), provided that Developer must notify City of such objection(s) to title within five (5) Business Days of being made aware of the existence of such exceptions. If Developer gives a Subsequent Title Defects Notice to City, City shall have five (5) Business Days after receipt of the Subsequent Title Defects Notice to notify Developer that either (a) City will remove such objectionable exceptions from title on or before the Closing, provided that City may extend the Closing for such period as shall be required to effect such cure, but not beyond thirty (30) days, or (b) City elects not to cause such exceptions to be removed. If City fails to give such notice timely to Developer, City shall have been deemed to have given notice to Developer under clause (b). City shall have no obligation to remove any title exceptions to which Developer objects. The procurement by City of a commitment of the Title Company for the Title Policy (defined below) or an endorsement thereto insuring Developer against any title exception that was disapproved pursuant to this Section 7.2.2, shall be deemed a cure by City of such disapproval so long as such title exception does not materially adversely affect: (i) Developer's access to, use of, or intended operations on the Developer Parcel; or (ii) the market value of the Developer Parcel. If City gives or is deemed to have given notice under clause (b) above, Developer shall have two (2) Business Days from the date on which such notice to Developer is given in which to notify City that Developer will nevertheless proceed with the conveyance and take title to the Developer Parcel subject to such exceptions (collectively, the "New Exceptions") or that Developer will terminate this Agreement. If Developer fails to give such notice in a timely fashion, Developer shall be deemed to have elected to proceed with the conveyance and take title to the Developer Parcel subject to the New Exceptions. If this Agreement is terminated pursuant to the foregoing provisions of this Section 7.2.2, then (i) promptly upon such termination, Developer shall deliver to City the Site Information and

Additional Information, and (ii) the Earnest Money Deposit shall be released to Developer, whereupon each of the Parties shall not have any further obligation or liability to the other Parties, save and except for the Surviving Obligations and any other obligations that are expressly provided herein to survive the Closing.

7.2.3 Developer's obligation to accept conveyance of the Developer Parcel shall be conditioned upon the Title Company issuing at Closing to Developer an ALTA 2006 owner's form of title insurance policy in the amount of \$4,664,048 insuring that fee simple title to the Developer Parcel is vested in Developer subject only to the Permitted Exceptions and any New Exceptions (the "Title Policy"). Developer shall be entitled to request that the Title Company provide such endorsements to the Title Policy as Developer may reasonably require, and the Developer shall pay the costs of any such requested endorsements, and provided further that the Closing shall not be delayed as a result of Developer's request.

8. Conditions to Closing on Conveyance of Developer Parcel.

8.1 Conditions Benefiting City. The obligation of City to convey the Developer Parcel pursuant to this Agreement is subject to the satisfaction on or before the Closing Date of all of the following conditions precedent, which conditions are for the benefit of the City and the satisfaction of which may be waived only in writing by the City:

8.1.1 Developer shall have obtained all Development Approvals for the Site relating to the construction of Phase One of the Project. The City agrees and acknowledges that the Developer's performance in obtaining such Development Approvals is partially dependent upon the City's cooperation and assistance in the Development Approval process and as such, the City agrees to review and expeditiously process and act on applications by the Developer for Development Approvals.

8.1.2 The Developer shall submit to the City a complete budget setting forth the expected costs of Phase One of the Project and an estimate of the costs for Phase Two of the Project in "today's" dollars, including the estimated costs of the Developer Improvements and the estimated cost of the Eligible Public Improvements to be paid or reimbursed by the City, subject to the Cap Amount. The budget will set forth the hard construction costs, the soft costs and the contingencies budgeted for each portion of the Project, and shall set forth those costs budgeted for Phase One and those costs budgeted for Phase Two provided that the budget for Phase Two costs will be estimated.

8.1.3 The Developer shall submit a preliminary financing plan, which may be in the form of a loan commitment and statement of equity sources for Phase One of the Project, that has been reviewed and approved by the City Manager. The preliminary financing plan shall be based on the budget submitted to the City and shall demonstrate that the Developer has the construction financing and funding commitments in the amounts necessary to complete construction of all of the Developer Improvements that comprise Phase One of the Project, plus any costs of the Eligible Public Improvements that exceed the Cap Amount. The City's approval or disapproval of the preliminary financing plan will be provided in writing by the City to the Developer within twenty (20) business days of submittal of the financing plan to the City. If the

City does not provide its approval or disapproval within such twenty (20) business days, the preliminary financing plan shall be deemed approved by the City.

8.1.4 Developer's warranties and representations set forth herein shall be true and correct in all material respects as of the Closing Date and, at City's request, Developer shall so certify.

8.1.5 Delivery at Closing by the Developer of the insurance policy required in Section 21.7 below.

8.1.6 Developer shall have performed each and every other obligation to be performed by Developer prior to the Closing Date pursuant to this Agreement.

8.2 Conditions Benefiting Developer. The obligation of Developer to accept conveyance of the Developer Parcel pursuant to this Agreement is subject to the satisfaction on or before the Closing Date of all of the following conditions precedent, which conditions are for the benefit of Developer and the satisfaction of which may be waived only in writing by Developer:

8.2.1 Delivery and execution by City of all instruments and other items required to be delivered by City prior to the Closing Date pursuant to this Agreement.

8.2.2 City's warranties and representations set forth herein shall be true and correct in all material respects as of the Closing Date and, at Developer's request, the City shall so certify.

8.2.3 City shall have performed each and every obligation to be performed by City prior to the Closing Date pursuant to this Agreement.

8.2.4 As of the Closing, the Title Company shall have committed to issue the Title Policy to Developer upon the sole conditions of the payment of Title Company's regularly-scheduled premium and satisfaction of all requirements of the Title Commitment

8.3 Failure of Conditions Relating to Conveyance of Developer Parcel. If any of the conditions set forth in Sections 8.1 or 8.2 are not timely satisfied for any reason and such condition is not waived by the party for whose benefit the condition exists, then the party for whose benefit the unsatisfied condition exists may, in its sole discretion, either delay the Closing until the condition is satisfied by up to (but not in excess of) thirty (30) additional days (after which time this Agreement shall automatically terminate if the condition is not satisfied or waived by the end of this 30-day period), or terminate this Agreement by giving written notice thereof to the other party. Such right of termination shall be the sole and exclusive remedy of the City and the Developer for failure to timely satisfy the conditions set forth in Section 8.1 or 8.2 hereof. In the event of a termination under this Section 8.3, Developer shall deliver the Site Information and Additional Information to City. With respect to the disposition of the Earnest Money Deposit and the Additional Earnest Money, (a) in the event that this Agreement is terminated due to a failure of conditions set forth in Section 8.1, the City may retain the Earnest Money Deposit and the Additional Earnest Money to offset a portion of its costs related to this transaction, and (b) in the event that this Agreement is terminated due to a failure of conditions

set forth in Section 8.2, the City shall remit the Earnest Money Deposit and the Additional Earnest Money to the Developer. Upon a termination of this Agreement pursuant to this Section 8.3, each of the Parties shall have no further obligation or liability to the other Parties under this Agreement, save and except for the Surviving Obligations and any other obligations that are stated herein to survive termination.

8.4 Satisfaction of Conditions Relating to Conveyance of Developer Parcel.

The occurrence of the Closing shall constitute satisfaction of the conditions set forth in Sections 8.1 and 8.2 not otherwise specifically satisfied or waived by Developer or the City, except that the City's warranties and representations in Section 22 and the Developer's warranties and representations in Section 23 and all other obligations that are specifically stated to survive the termination of or the Closing under this Agreement, shall survive the Closing.

9. Deliveries at Closing; Taxes, Apportionments and Costs.

9.1 Deliveries by City. At the Closing, City shall deliver or cause to be delivered to Developer all of the following documents duly executed and acknowledged where appropriate:

9.1.1 The Deed conveying the Developer Parcel to the Developer. The Deed includes provisions prohibiting certain uses on the Developer Parcel, which prohibitions shall run with the land and bind Developer and all future owners of the Developer Parcel. In addition, unless approved in writing by the City or except as hereinafter provided, the Developer agrees that it will not transfer the Developer Parcel or a controlling interest in the entity that owns the Developer Parcel prior to receipt of the first Certificate of Occupancy for any portion of the Project. In the absence of any such written consent by the City, any such transfer shall be deemed void. Notwithstanding the foregoing, or any provision to the contrary contained herein, the City recognizes that the Developer may form, together with its investors, a separate, special purpose entity or entities to develop, own and/or operate all or a portion of the Developer Parcel, and any such transfer of the Developer Parcel to such a special purpose entity or entities shall not require the prior written consent of the City. Additionally, the conveyance of the Public Plazas to the District is expressly permitted and such conveyance shall not require the prior written consent of the City.

9.1.2 Affidavits and similar instruments as are reasonably required by the Title Company (i) to close this transaction and to issue the Title Policy, and (ii) for the satisfaction of any Internal Revenue Service disclosure and reporting requirements, including, but not limited to, Form 1099B. All such affidavits and similar instruments shall be in form and substance reasonably satisfactory to City and the Title Company.

9.1.3 A reasonable and customary assignment document conveying and assigning to Developer any water taps appurtenant to the Developer Parcel, or delivering to the Developer a water tap credit in the amount of \$148,000, at the City's option.

9.1.4 Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

9.2 Deliveries by Developer. At the Closing, Developer shall deliver or cause to be delivered to City all of the following funds and documents duly executed and acknowledged where appropriate:

9.2.1 At the Developer's option, the Earnest Money Deposit and the Additional Earnest Money, if any, may be applied at Closing to the Developer's share of closing costs, prorations and any fees, as more particularly set forth in Section 9.3 below.

9.2.2 Affidavits and similar instruments as are reasonably required by the Title Company (i) to close this transaction and to issue the Title Policy, and (ii) for the satisfaction of any Internal Revenue Service disclosure and reporting requirements. All such affidavits and similar instruments shall be in form and substance reasonably satisfactory to Developer and the Title Company.

9.2.3 Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

9.3 Taxes; Apportionments; Costs.

9.3.1 Fees to the Title Company for real estate closing services shall be paid one-half by Developer and one-half by City. Any realty transfer or sales taxes imposed by law on the sale of the Developer Parcel pursuant to this Agreement shall be paid by Developer.

9.3.2 Water, sewer, electric, and natural gas charges and all other apportioned charges shall be prorated between City and Developer as of the Closing Date on a per diem basis, based on the fiscal year or billing period, as applicable, of the charging utility. To the extent possible, City shall cancel its utility accounts for the Developer Parcel as of the Closing Date, and any such accounts that are terminated by City shall not be prorated. The Developer Parcel is currently exempt from real and personal property taxes. Developer shall be responsible for all real and personal property taxes accruing from and after the Closing Date.

9.3.3 Each Party shall pay all its own expenses incurred in connection with this Agreement and the transaction contemplated hereby, including, and without limitation, their respective accounting, legal and appraisal fees. City shall pay all premiums for the Title Policy in an amount not exceeding \$10,000, and Developer shall pay for all additional costs of the Title Policy, if any, and to obtain extended coverage or endorsements to the Title Policy. Developer shall pay for all recording and documentary fees. The Earnest Money Deposit and Additional Earnest Money, if any, shall either be applied to Developer's share of closing costs or refunded to Developer at its option.

10. Casualty; Condemnation.

10.1 Casualty. If, prior to Closing, any part of the Developer Parcel is damaged or destroyed by flood, fire or other casualty, City shall promptly notify Developer in writing of such casualty loss, and shall notify the Developer whether any such damage is covered by the City's insurance. If such damage is covered by the City's insurance, such notice to the Developer shall include a determination by the City whether the City will (a) apply such insurance proceeds to the repair of the Developer Parcel prior to the Required Closing Date, or

(b) not repair the Developer Parcel, but remit such insurance proceeds allocable to the Developer Parcel to the Developer at the Closing. Within twenty (20) days after Developer's receipt of City's notice of the damage, Developer shall deliver written notice to City and the Title Company, electing either to (i) proceed with this transaction and the Closing in accordance with this Agreement notwithstanding such damage; or (ii) terminate this Agreement, in which event this Agreement shall terminate. If this Agreement is terminated pursuant to this Section 10.1, the Developer shall deliver to City all Site Information and Additional Information, and the City will return the Earnest Money Deposit and Additional Earnest Money, if any, to Developer. Developer's failure to deliver either such notice to City and Title Company within such twenty (20) day-period shall constitute Developer's election to proceed to the Closing. If Developer elects (or is deemed to have elected) not to terminate this Agreement, then the Closing shall nevertheless occur as otherwise provided in this Agreement, and City shall have no obligation to repair such damage or destruction, but shall be required to remit to the Developer any insurance proceeds received by the City and allocable to the Developer Parcel.

10.2 Condemnation. In the event that all or, in Developer's reasonable judgment, any substantial portion of the Site as would render the Site not suitable for Developer's proposed use, shall be taken in condemnation or under the right of eminent domain after the Effective Date and before the Closing, Developer may, at its option either (i) terminate this Agreement by written notice thereof to City, whereupon Developer shall deliver the Site Information and Additional Information to City, and the City shall promptly return to Developer the Earnest Money Deposit and any Additional Earnest Money, or (ii) proceed to close the transaction contemplated herein pursuant to the terms hereof in which event City shall assign and turn over to Developer, and Developer shall be entitled to receive and keep all awards for the taking by eminent domain of the Developer Parcel which accrue to City. In the event that a portion of the Site less than a substantial portion is taken, or Developer elects not to terminate this Agreement, Developer shall proceed to close the transaction contemplated herein and the City shall assign and turn over to Developer and Developer shall be entitled to receive and keep all awards for the taking by eminent domain which accrue to City with respect to the Developer Parcel.

11. Brokerage Commissions. No broker commission shall be paid in connection with the conveyance of the Developer Parcel to the Developer. The Developer shall indemnify and hold harmless the City from any and all commissions claimed by any broker or third party representing Developer arising by virtue of this transaction whose commissions might legally arise from acts of Developer. To the extent that Developer or any principal or affiliate of Developer is a licensed real estate professional that may seek to receive a commission, Developer waives, for itself and any such principal or affiliate, any claim to a commission with respect to the conveyance of the Developer Parcel under this Agreement. The obligations of indemnity and waiver as contained in this Section 11 shall survive the Closing or the earlier termination of this Agreement.

12. Reconveyance of Developer Parcel and Reconveyance of Phase Two Parcel.

12.1 Reconveyance Right Relating to Developer Parcel. Prior to the issuance of the first Certificate of Occupancy for any portion of the Project, the City shall have the right to

require the Developer to reconvey the entire Developer Parcel back to the City, in accordance with the provisions of this Section 12, upon the occurrence of any of the following events:

- (a) This Agreement is terminated pursuant to Section 27(b) hereof.
- (b) Subject to Force Majeure, the Developer fails to proceed with construction of Phase One of the Project as required by this Agreement for a period of one hundred twenty (120) days after written notice thereof from the City.
- (c) Subject to Force Majeure, the Developer abandons or substantially suspends construction on Phase One of the Project for a period of one hundred twenty (120) days, after written notice of such abandonment or suspension from the City.
- (d) The Developer transfers or suffers any involuntary transfer of the Developer Parcel or any part thereof or of a controlling interest in the ownership entity in violation of this Agreement.

The City shall have no duty or obligation to require such reconveyance of the Developer Parcel, and the decision whether or not to require such reconveyance shall be in the sole discretion of the Council, and subject to appropriation of any amounts due to the Developer in accordance with Section 12.3 hereof upon any such reconveyance. The Developer acknowledges and agrees that the City's reconveyance rights include 130 North Cleveland Avenue which was previously conveyed to the Developer by the City in connection with the redevelopment of the Project and that after the conveyance of the Developer Parcel to the Developer, all additional references herein to the Developer Parcel are deemed to include 130 North Cleveland Avenue.

12.2 Exercise of Reconveyance Right by City of Entire Developer Parcel. To exercise its right to require the Developer to reconvey the entire Developer Parcel to the City, the City shall provide written notice to the Developer that it is exercising its option to compel reconveyance of the Developer Parcel to the City. Any reconveyance of the Developer Parcel pursuant to this Section 12 shall be completed on the date that is no more than thirty (30) days after the giving of the notice exercising the election for such reconveyance. Developer shall reconvey the Developer Parcel to the City by special warranty deed, which will be subject to (i) any real property taxes and assessments against the Developer Parcel for the year of reconveyance, payable the following year, that are not yet due and payable as of the reconveyance; (ii) those title exceptions and matters to which the warranty of title in the deed conveying the Developer Parcel to the Developer is subject; (iii) any title exceptions or matters arising from measures or actions taken in furtherance of the redevelopment of the Project which were in accordance with this Agreement or approved by the City; and (iv) any utilities easements or similar grants of interests or title matters arising in the ordinary course of actions and measures taken to proceed with the redevelopment of the Project. Any applicable real property taxes and assessments for the year of reconveyance will be prorated to the date of reconveyance or otherwise allocated so that Developer bears the taxes and assessments accruing during its period of ownership. Any recording fees or documentary fees attributable to the reconveyance of the Developer Parcel will be paid by the Developer.

In the event that a lien, mortgage or deed of trust has been placed on the Developer Parcel to secure a loan or other financing relating to the Developer Parcel, the Developer shall repay any amounts owing pursuant to such loan or other financing and discharge the lien and mortgage on the Developer Parcel in connection with the reconveyance of the Developer Parcel. To the extent that the Developer does not repay any such amounts owing pursuant to any such loan or other financing, the City may, but is not required, to make such payment directly to the lender and receive a credit against any amounts owed by the City to the Developer pursuant to Section 12.3 hereof.

12.3. Amounts Payable by City in Connection with Reconveyance of Entire Developer Parcel. The City agrees that in order to exercise its right to have the Developer Parcel reconveyed to the City, that the City shall be required to pay to the Developer at the closing of any such reconveyance (a) any unreimbursed costs incurred by the Developer on Eligible Public Improvements, subject to the Cap Amount, plus (b) the actual costs incurred by the Developer on the construction, acquisition and installation of the Developer Improvements on the Developer Parcel, less (c) an amount equal to the costs incurred by the City to demolish and abate the Developer Parcel and to otherwise render the Developer Parcel suitable for the Developer's proposed construction, installation and redevelopment of the Project. Prior to the payment of such amounts, the Developer shall provide evidence satisfactory to the City that such costs were actually incurred in connection with the Project. With respect to reimbursing the Developer for Eligible Public Improvements in connection with a reconveyance of the Developer Parcel, the terms and provisions set forth in this Agreement relating to the payment or reimbursement of Eligible Costs incurred in connection with Eligible Public Improvements shall apply. In the event that the City and the Developer are in dispute with respect to all or any portion of the reimbursement amount relating to Developer Improvements or Eligible Public Improvements, the Developer shall have the right to have an amount equal to the disputed amount deposited with a third party escrow agent, acceptable to the City, as a condition precedent to reconveying the Developer Parcel to the City.

12.4 Project Documents. If the Developer Parcel is reconveyed to the City pursuant to this Section 12, and the City pays all amounts due to the Developer pursuant to Section 12.3 hereof in connection therewith and deposits any amounts that are in dispute with a third party escrow agent, the Developer agrees that it shall provide the City with all architectural, engineering or other plans, specifications or drawings prepared by the Developer, or on its behalf, in connection with proposed improvements to the Site, any engineering reports, soil test reports, environmental reports, surveys, topographic surveys, market studies, title policies, feasibility studies and any other studies or reports conducted with respect to any portion of the Site or its use or development prepared by the Developer or on its behalf. Developer shall have no obligation or liability concerning the contents of such materials or their accuracy or completeness.

12.5 Reconveyance Right Subordinate to Lenders. The City agrees that its reconveyance rights under this Section 12 shall be subordinate to the lien and rights of the lender under any deed of trust or mortgage financing placed on the Developer Parcel to finance any Developer Improvements or other elements of the Project. From time to time upon request, the City will execute such confirmations of this subordination of the City's reconveyance rights as

may be requested by any applicable lender, to be made upon such terms and conditions as the lender may require in accordance with its ordinary business practices.

12.6 Termination of Reconveyance Right. The City acknowledges and agrees that after a Certificate of Occupancy is issued for any part of the Project, that the City shall no longer have the right to compel the Developer to reconvey the Developer Parcel to the City; provided, however, that subject to the terms and conditions set forth in Section 12.8 hereof, the City shall have the right to require the Developer to reconvey the Phase Two Parcel to the City notwithstanding that a Certificate of Occupancy has been obtained with respect to any improvement located in Phase One of the Project.

12.7 Termination of Agreement upon Reconveyance. This Agreement shall terminate on the date that the entire Developer Parcel is reconveyed to the City pursuant to this Section 12. Upon a termination of this Agreement, each of the Parties shall have no further obligation or liability to the other Parties under this Agreement, save and except for the Surviving Obligations and any other obligations that are stated herein to survive termination.

12.8 Right of Reconveyance of Phase Two Parcel. Except as otherwise set forth in Section 13.6 hereof, the City shall have the right, but not the obligation, to require the Developer, or any other party that owns all or any portion of the Phase Two Parcel, to reconvey the Phase Two Parcel back to the City, in accordance with this Section 12.8, in the event that the Construction has not been Commenced on a hotel or office building, or other improvement agreed to in writing by the City, on the Phase Two Parcel by December 31, 2018. For purposes of this Section 12.8, Construction shall be deemed to Commence on the Phase Two Parcel when all required permits and licenses have been obtained with respect to the improvement to be constructed on the Phase Two Parcel, and there has been installed a permanent required construction element, such as a caisson, footing, foundation or wall.

The City acknowledges and agrees that if Construction has Commenced on the Phase Two Parcel in accordance with the foregoing provisions, that the City shall no longer have the right to compel the Developer or other owner of the Phase Two Parcel to reconvey the Phase Two Parcel to the City.

To exercise its right to require the Developer or other owner of the Phase Two Parcel to reconvey the Phase Two Parcel to the City, the City shall provide written notice to the Developer, and any other owner of the Phase Two Parcel, that it is exercising its option to compel reconveyance of the Phase Two Parcel to the City. Any reconveyance of the Phase Two Parcel pursuant to this Section 12.8 shall be completed on the date that is no more than thirty (30) days after the giving of the notice exercising the election for such reconveyance. Developer or such other owner of the Phase Two Parcel shall reconvey the Phase Two Parcel to the City by special warranty deed, which will be subject to (i) any real property taxes and assessments against the Phase Two Parcel for the year of reconveyance, payable the following year, that are not yet due and payable as of the reconveyance; (ii) those title exceptions and matters to which the warranty of title in the deed conveying the Phase Two Parcel to the Developer is subject; (iii) any title exceptions or matters arising from measures or actions taken in furtherance of the redevelopment of Phase Two of the Project which were in accordance with this Agreement or approved by the City; and (iv) any utilities easements or similar grants of interests or title matters

arising in the ordinary course of actions and measures taken to proceed with the redevelopment of Phase Two of the Project. Any applicable real property taxes and assessments for the year of reconveyance will be prorated to the date of reconveyance or otherwise allocated so that Developer or such other owner bears the taxes and assessments accruing during its period of ownership. Any recording fees or documentary fees attributable to the reconveyance of the Phase Two Parcel will be paid by the Developer or such other owner.

In the event that a lien, mortgage or deed of trust has been placed on the Phase Two Parcel to secure a loan or other financing relating to the Phase Two Parcel, the Developer or such other owner shall repay any amounts owing pursuant to such loan or other financing and discharge the lien and mortgage on the Phase Two Parcel in connection with the reconveyance of the Phase Two Parcel. To the extent that the Developer or such other owner does not repay any such amounts owing pursuant to any such loan or other financing, the City may, but is not required, to make such payment directly to the lender and the Developer or such other owner shall be obligated to pay the City for any such payment made by the City.

The City shall not be required to pay the Developer or such other owner any amounts to exercise its right to require the Developer or such other owner to reconvey the Phase Two Parcel to the City pursuant to this Section 12.8, except that the City shall pay all its costs and expenses related to such reconveyance.

To the extent that the Phase Two Parcel has been reconveyed to the City in accordance with this Section 12.8, no Payments in Lieu of Taxes shall be required to be made by the Developer or any previous owner of the Phase Two Parcel with respect to the Phase Two Parcel.

13. Payment or Reimbursement of Eligible Costs.

13.1 Reimbursement of Eligible Costs By City. Subject to the terms, provisions and limitations of this Agreement, the City hereby covenants and agrees that it shall pay or reimburse the Developer for Eligible Costs up to the Cap Amount, subject to annual appropriation by the Council. All reimbursements or payments of Eligible Costs shall be made in accordance with the requisition process set forth in Exhibit G attached hereto.

13.2 Issuance of Bonds. In the event that the City or the Authority determines to issue Bonds to finance all or a portion of the Eligible Costs, then, at the option of the City or the Authority, as the case may be, the Developer Pledged Revenues and the District Pledged Revenues shall be pledged to the repayment of the Bonds. The Developer agrees that, upon the written request of the City, it shall execute any additional documents required to create a valid lien on the Developer Pledged Revenues to secure Bonds issued by the City or the Authority.

In connection with the issuance of the Bonds, the District shall enter into the District Pledge Agreement, or the Cap Amount shall be reduced in accordance with Section 15 hereof.

13.3 Certificates of Participation. Notwithstanding the foregoing or any provisions to the contrary herein, in the event that the Bonds issued by the City are certificates of

participation, the City may require the Developer to remit the Developer Pledged Revenues to the City and the District to remit the District Pledged Revenues to the City. In such event, (a) the Developer agrees that, upon receipt of written directions from the City, it will remit, or cause to be remitted, the Developer Pledged Revenues to the City, and (b) the District Pledge Agreement may provide that the District shall remit the District Pledged Revenues to the City.

13.4 Contributions from City's General Fund or Other Available Funds. Subject to annual appropriation by the Council, the City may apply any available funds of the City to the payment or reimbursement of Eligible Costs. To the extent that the City applies available funds to the payment or reimbursement of all or a portion of the Eligible Costs, the City may require the Developer to remit the Developer Pledged Revenues to the City and the District to remit the District Pledged Revenues to the City. In such event, (a) the Developer agrees that, upon receipt of written directions from the City, it will remit, or cause to be remitted, the Developer Pledged Revenues to the City, and (b) the District Pledge Agreement may provide that the District shall remit the District Pledged Revenues to the City.

13.5 Subject to Annual Appropriation. Notwithstanding any provision to the contrary contained herein, the City's obligation to pay or reimburse the Developer for Eligible Costs shall be subject to annual appropriation by the Council, in its sole discretion. Nothing in this Agreement is intended to nor shall be construed to create any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of the Constitution, the Charter, or the laws of the State, and any such financial obligation of the City created by this Agreement is expressly subject to annual appropriation by the City.

13.6 Sharing of Risk Related to Phase Two. The City and the Developer acknowledge that the Cap Amount is, in part, based on the construction and development of Phase Two of the Project and the revenues that are expected to be generated from Phase Two and pledged to the payment of Bonds, or used to reimburse the City for advances from other City funds.

13.6.1 The Developer hereby agrees that if the Developer or other owner of all or any portion of the Phase Two Parcel is required to reconvey the Phase Two Parcel to the City in accordance with Section 12.8 hereof, that the Developer shall pay to the City on each December 1, beginning December 1, 2019 through December 1, 2042, an amount equal to the annual debt service payment on a \$1.5 million loan obligation, amortized with level debt service from December 1, 2019 through December 1, 2042, including both principal and interest, at an interest rate equal to the net effective interest rate on the Bonds as of the date of issuance of the Bonds (the "Phase Two Payments"). At the time of any such reconveyance, the City will prepare the schedule of the Phase Two Payments that, absent manifest error, shall be binding on the Developer.

13.6.2 In the event that the City notifies the Developer or other owner of the Phase Two Parcel that it is requiring reconveyance of the Phase Two Parcel in accordance with Section 12.8 hereof, the Developer or such other owner may elect within 10 Business Days of such notice to delay the City's reconveyance right for one year by paying to the City at the time of such election a one-time payment in an amount equal to the annual debt service payment due in such year on a \$3.0 million loan obligation, amortized with level debt service from

December 1, 2019 through December 1, 2042, including both principal and interest, at an interest rate equal to the net effective interest rate on the Bonds as of the date of issue of the Bonds. Upon receipt of such payment, the City's right to require reconveyance of the Phase Two Parcel pursuant to Section 12.8 hereof shall be delayed to December 31, 2019. If Construction has not Commenced (within the meaning of Section 12.8 hereof) on the Phase Two Parcel on or prior to December 31, 2019, the City shall have the right to require reconveyance of the Phase Two Parcel from the Developer or any other owner of all or any portion of the Phase Two Parcel in accordance with the applicable provisions of Section 12.8 hereof. In such event, the Developer shall thereafter be required to make the Phase Two Payments in accordance with Section 13.6.1 hereunder. In the event that the Developer elects to delay the City's reconveyance right related to the Phase Two Parcel for one year pursuant to the provisions of this Section 13.6.2, the City shall have the right to beautify the Phase Two Parcel at its sole cost and expense. To exercise its right to beautify the Phase Two Parcel, the City shall provide written notice to the Developer at least ten (10) Business Days prior to commencing any such beautification project.

13.6.3 In the event that the construction of a hotel, office building or other improvement agreed to in writing by the City is completed on the Phase Two Parcel subsequent to December 1, 2019, whether by the Developer or a third party, the Developer shall receive a credit each year against the Phase Two Payments in an amount equal to the Property Tax Increment Revenues received from Phase Two of the Project in such year.

In the event that the District Debt Service Mill Levy exceeds twenty-five (25) mills, the Developer shall receive a credit each year against the Phase Two Payments in an amount equal to the Property Tax Increment Revenues received in such year from the Project as a result of such excess mill levy.

13.6.4. In consideration for the Developer's agreement to make the Phase Two Payments to the City in the event Phase Two is not constructed or completed as currently expected by the parties, the City agrees that the Cap Amount shall not be reduced due to a delay in Phase Two.

14. Conditions Precedent to Reimbursement of Eligible Costs. The City's obligation to pay or reimburse the Developer for Eligible Costs, up to the Cap Amount, is subject to the following conditions precedent, which shall be satisfied or waived in writing by the City Manager:

(a) The Developer shall provide to the City evidence satisfactory to the City Manager that the Developer has obtained all equity and private financing necessary to construct the Developer Improvements for Phase One and any costs of the Eligible Public Improvements in excess of the Cap Amount. The Developer shall provide this evidence in the form of a final financing plan. The City's approval or disapproval of the financing plan will be provided in writing by the City to the Developer within twenty (20) business days of submittal of the financing plan to the City. If the City does not provide its approval or disapproval within such twenty (20) business days, the financing plan shall be deemed approved by the City.

(b) The Developer shall have obtained executed lease agreements or letters of intent totaling at least 8,000 square feet of the retail area of the Project with tenants that, in the aggregate, have an average sales per square foot of at least \$270 based on average national sales performance.

(c) The Developer shall have imposed the Add-On PIF in accordance with the Add-On PIF Covenant, and shall have entered into the Add-On PIF Collection Services Agreement requiring the Add-On PIF Collection Agent to remit the Add-On PIF Revenues either to the Bond Trustee, to the City pursuant to the provisions of Section 13 hereof, or to such other entity as agreed to in writing by the City and the Developer, after payment of reasonable fees and expenses to the Add-On PIF Collection Agent. The City shall have the right to review and consent to the forms of the Add-On PIF Covenant and the Add-On PIF Collection Services Agreement and to review or audit the books and records relating to the imposition, collection and remittance of the Add-On PIF revenues. The City shall also have the right to review the fees and expenses charged by the Add-On PIF Collection Agent to verify that such fees and expenses are reasonable.

(d) If a hotel is located on the Site, the Developer shall have imposed the Lodger's Fee on the purchase of lodging at such hotel.

(e) The District shall have been organized and created, the Service Plan shall authorize the District to levy the District Debt Service Mill Levy and the District O&M Mill Levy, and the District shall have entered into an intergovernmental agreement with the City pursuant to which the District agrees to levy the District Debt Service Mill Levy and the District O&M Mill Levy, to remit all revenues generated from the District Debt Service Mill Levy that are not Property Tax Increment Revenues to the City or as otherwise directed by the City, and to maintain the Public Plaza. The provisions of such intergovernmental agreement may be included in the District Pledge Agreement. Notwithstanding the foregoing, the District shall not be obligated to pledge and remit revenues from the District Debt Service Mill Levy in excess of twenty-five (25) mills.

(f) The Eligible Costs to be paid or reimbursed by the City shall have been verified in accordance with Exhibit G.

(g) No Event of Default by the Developer shall have occurred and be continuing hereunder.

15. Calculation of Cap Amount. The City's obligation to pay or reimburse the Developer for Eligible Costs shall be subject to the Cap Amount. The Cap Amount shall consist of two components: \$13,676,367 for Parking Facility Costs and \$4,000,000 for all other Eligible Public Improvements that do not constitute Parking Facility Costs. If the Parking Facility Costs are less than the allocation of the Cap Amount to Parking Facility Costs, the City shall apply the remaining Cap Amount allocated to the Parking Facility to the payment or reimbursement of other Eligible Public Improvements. If the Parking Facility Costs are more than the allocation of the Cap Amount to Parking Facility Costs, the City shall apply any remaining Cap Amount allocated to all other Eligible Public Improvements to the payment or reimbursement of the

Parking Facility in the event such costs for all other Eligible Public Improvements are less than the Cap Amount allocated to such component.

In the event that the District does not impose the District Debt Service Mill Levy or does not enter into the District Pledge Agreement, then the Cap Amount shall be reduced by \$3,296,659 to an adjusted Cap Amount of \$14,379,708. In the event that the Cap Amount is decreased, the allocation of the Cap Amount to the Parking Facility Costs will remain the same and such decrease shall be allocated to the Cap Amount for all other Eligible Public Improvements that do not constitute Parking Facility Costs.

16. Fee Waivers.

16.1. Capital Expansion Fees. The City acknowledges that the Site is located in Historic Downtown Loveland and capital expansion fees and building permit fees imposed upon a construction project by the City are not charged or collected on projects within Historic Downtown Loveland pursuant to Section 16.38.072 of the Loveland Municipal Code. County fees, school district fees, and fees due to the City's utility enterprises are not waived and shall remain due and payable in accordance with the Loveland Municipal Code.

16.2. Waiver of Construction Material Use Tax. On the express condition that Developer completes the redevelopment of the Site and construction of the Project in compliance with and within the time frames set forth herein, the Use Taxes imposed by the City pursuant to Loveland Municipal Code Section 3.16.040 upon the construction and building materials used for the Project shall be waived (the "Use Tax Waiver"). If Developer fails to complete the redevelopment of Phase One of the Site and construction of Phase One of the Project in compliance with and within the time frames set forth in Section 21 hereof, the Use Taxes that would have been due with respect to the Project in the absence of the foregoing waiver shall be deemed to have been deferred and shall be paid to the City by Developer upon written demand therefore by the City. If not timely paid, the City may use any or all collection remedies available to it under City Code Chapter 3.16. Any portion of the Use Tax Waiver not utilized by December 31, 2021 shall expire at that time and the City shall have no obligation to waive the Use Taxes due with respect to the Project after such date. The Use Taxes waived or deferred pursuant to this Section 16.2, shall not include any amounts for use taxes or fees payable to Larimer County in connection with the Project, which shall be paid by Developer as required by law.

17. Movie Theater Incentive.

17.1. Movie Theater Incentive. Subject to annual appropriation by the Council, and provided that (a) the Movie Theater is operating as a first run movie theater, and (b) no Event of Default has occurred and is continuing under this Agreement, the City shall pay to the Developer the following Movie Theater Incentive on or prior to December 31 of each year for 10 years, in a total amount not exceeding \$2,189,944, beginning in the year that the Movie Theater opens, in accordance with the following schedule:

<u>Year</u>	<u>Amount</u>
1	\$200,000
2	204,000
3	208,080
4	212,242
5	216,486
6	220,816
7	225,232
8	229,737
9	234,332
10	239,019

During such 10 year period, if the Movie Theater generates at least the minimum amount of revenues set forth in Exhibit H in each applicable year, then the Developer shall remit to the City a portion of such revenues generated in such year, as further set forth in Exhibit H. The City shall have the right to annually audit the revenues of the Movie Theater to verify the revenues received by the Movie Theater during such 10 year period.

17.2 320 North Cleveland. In connection with the execution and delivery of this Agreement, the Developer and the City shall enter into an agreement related to 320 North Cleveland, which property is owned by the City but not located on the Site, that will set forth the terms and conditions upon which certain revenues generated by 320 North Cleveland will be remitted to the Developer for a designated period of time as an additional incentive for the Movie Theater. Notwithstanding the foregoing, in the event that the City and the Developer do not enter into an agreement relating to 320 North Cleveland, this shall not constitute an Event of Default under this Agreement.

18. Payments in Lieu of Taxes. To the extent that the Property Tax Increment Revenues attributed to the Project in any given year through 2027 are less than the Minimum Property Tax Increment Amount for such year, the Developer agrees that no later than November 1 of such year it shall make a Payment in Lieu of Taxes to the City in an amount equal to the difference between the amount of the Property Tax Increment Revenues attributed to the Project in such year, on a parcel by parcel basis as set forth in Exhibit E, and the Minimum Property Tax Increment Amount for such parcel for such year. Property Tax Increment Revenue exceeding the Minimum Property Tax Increment Amount for a parcel may be used to offset any Property Tax Increment Revenue deficit on another parcel to the extent the owners of such parcels are controlled by, controlling, or under common control with each other.

To the extent that the District Property Tax Revenues remitted to the City or its designee pursuant to the District Pledge Agreement in any given year beginning in 2028 is less than the Minimum District Property Tax Revenues, as set forth in Exhibit E hereto, the Developer agrees that no later than November 1 of such year it shall make a Payment in Lieu of Taxes to the City in an amount equal to the difference between the District Property Tax Revenues remitted to the City or its designee, on a parcel by parcel basis as set forth in Exhibit E, and the Minimum District Property Tax Revenues for such parcel for such year. District Property Tax Revenue exceeding the Minimum District Property Tax Revenues for a parcel may be used to offset any

District Property Tax Revenue deficit on another parcel to the extent the owners of such parcels are controlled by, controlling, or under common control with each other.

The Developer and any subsequent owner of any parcel comprising the Developer Parcel may assign its obligations to make Payments in Lieu of Taxes under this Section in connection with the conveyance of the parcel, and Developer and any subsequent owner of the conveyed parcel shall be released from its obligation to make Payments in Lieu of Taxes for the conveyed parcel upon the assignee assuming such obligation in writing in a commercially reasonable form acceptable to the City. The Developer, or any assignee permitted under this Section, shall continue to make any such required Payment in Lieu of Taxes to the extent that any Bonds remain outstanding, or any bonds or other obligations issued to refund such Bonds remain outstanding. The Developer's and any permitted assignee's obligation to make Payments in Lieu of Taxes shall terminate upon the payment or defeasance of all outstanding Bonds and any other bonds or other obligations issued to refinance or refund such Bonds. Notwithstanding the foregoing or any provision to the contrary contained herein, no Payment in Lieu of Taxes shall be required to be made with respect to the Phase Two Parcel in the event that the Phase Two Parcel is reconveyed to the City in accordance with Section 12.8 hereof.

For purposes of this Section 18, the amount of Property Tax Increment Revenues attributed to the Project shall be calculated by the City and based on a formula that is designed to calculate the Property Tax Increment Revenues that would have been received from the Project if the Project had been a new urban renewal area, consisting solely of property within the Project, and the property tax base was the assessed value of the property in the Project area last certified prior to the approval of this Agreement. For purposes of this Agreement, Property Tax Increment Revenues shall be attributed to the Project based on the property tax levy of those entities levying taxes against taxable property in the Project against the assessed value of the property within the Project that exceeds the assessed value of such property last certified prior to the approval of this Agreement. The parties acknowledge and agree that the amount of Property Tax Increment Revenues attributed to the Project will not necessarily be the amount of Property Tax Increment Revenues actually received from the Project and deposited in the Special Fund of the Authority due to the fact that the Project is part of a larger Urban Renewal Area and the Property Tax Base is calculated on the total Urban Renewal Area and not just the area comprising the Project. The City's calculations regarding the Property Tax Increment Revenues attributed to the Project shall be provided in writing each year to the Developer and shall be binding on the parties, absent manifest error.

19. Construction of the Project. The Developer agrees that it shall finance, design, acquire, develop, construct and install the Project, including the Developer Improvements and the Eligible Public Improvements, in accordance with the terms and provisions of this Agreement. The design, acquisition, construction and installation of the Project shall comply with all applicable codes and regulations of the City.

19.1 Parking Facility. The Developer agrees that the Parking Facility is an Eligible Public Improvement that will be constructed on the City Parcel, and that the Parking Facility will be designed and built in accordance with the costs and design set forth in this Agreement and Exhibit B. The Parking Facility will be owned by the City and will serve the general public, as well as users of the Project.

19.11 Design of Parking Facility. Unless otherwise agreed to by the City, the Parking Facility shall be constructed with the following elements:

- (a) Approximately 3,300 square feet of brick primarily on the prominent corners at the towers and east /west elevations on level 1.
- (b) Cast in place concrete, with the barrier walls constructed as exposed concrete panels with v-groove reveals.
- (c) Glass at the towers and at the ground level on the east elevation.

19.12 Maintenance of Parking Facility. The City agrees that it shall pay all costs of operating and maintaining the Parking Facility; provided, however, that it may enter into an agreement with a third party entity to operate and maintain the Parking Facility. The Developer agrees that it shall impose the following operation and maintenance fees on certain designated portions of the Project and shall remit such fees to the City or its designee, to be applied to the operation and maintenance of the Parking Facility:

- (a) An annual fee of \$0.50 per square foot for all commercial and retail spaces in the Project, excluding the Movie Theater, subject to an annual increase of 2% for 10 years after the Parking Facility is open to the public.
- (b) A monthly fee of \$42 per parking space for residential units for 10 years after the Parking Facility is open to the public. For purposes of this calculation, each bedroom in a residential unit shall be charged for 0.7 of a parking space, as follows: a one bedroom unit shall be charged \$29.40 per month, a two bedroom unit shall be charged \$58.80 per month and a three bedroom unit shall be charged \$88.20 per month.
- (c) \$0.50 per Movie Theater ticket.
- (d) The Lodger's Fee.

19.12 Parking Facility Operations Plan. Unless otherwise agreed to by the City and the Developer, the City agrees that it will enter into a Parking Facility Operations Plan with the Developer pursuant to which the City will agree that either (a) it will keep the Parking Facility open to the public 24 hours a day, 365 days per year, except for required maintenance and repair, at no cost to the public; or (b) it will provide a certain designated number of parking spaces in the Parking Facility for use by the office tenants, hotel facility, and residential units within the Project, with such designated parking spaces not to exceed (i) 4 parking spaces for every 1,000 feet of office use in the Project; (ii) 1.2 parking spaces for every hotel room in the Project; and (iii) 0.7 parking spaces for each residential bedroom in the Project. Developer shall be permitted to assign its rights under such Parking Facility Operations Plan in connection with the conveyance or transfer of the separate Project elements to a successor owner.

19.2 Public Plaza. Unless otherwise agreed to by the City and the Developer, the Public Plaza will be owned, operated and maintained by the District. Programming, allowed uses and general operation will be jointly decided and coordinated among the Developer, the District and the City pursuant to a separate agreement among such parties. The District shall enter into an intergovernmental agreement with the City whereby the District agrees to levy the District O&M Mill Levy and to operate and maintain the Public Plaza.

19.3 Other Maintenance Obligations. The City, Developer and District shall enter into an intergovernmental agreement relating to the maintenance of all components of the Project, provided however, all streets, sidewalks and public right of way shall be dedicated to the City in accordance with the City requirements, and subject to applicable rights of acceptance and warranty, and shall be maintained by the City.

20. Conceptual and Construction Drawings. Developer shall, at its cost and expense, prepare Conceptual and Construction Drawings (defined below) for redevelopment of the Site and construction of the Project according to the scope and general description set forth on Exhibit B attached and incorporated by this reference, and in accordance with the following:

20.1. Conceptual Drawings. On or before thirty (30) days after the Effective Date, Developer shall prepare and submit to the City for approval basic concept and design drawings and related documents containing the overall plan for redevelopment of the Site and construction of the Project, which shall be a logical extension of and consistent with the general description set forth on Exhibit B and the Plan of Development (the "Conceptual Drawings"). The Conceptual Drawings shall specifically identify and include in general terms all public improvements to be completed by Developer in connection with the Project, including but not limited to: (i) utility and infrastructure improvements in the public right-of-way, including street and alley improvements; (ii) sidewalk and streetscape improvements; (iii) incremental energy efficiency and conservation modifications or improvements in excess of basic levels as established by applicable codes and regulations; and (iv) facade improvements for all portions of the building facing a public right-of-way.

Developer shall conduct at least one (1) public outreach meeting (in addition to any meetings or notices that may be required under the Loveland City Code in connection with the City's land use and development review process) to make the Conceptual Drawings available for public review and input by the citizens of Loveland. Developer shall make a reasonable record of such input and commentary as may be received and shall consider such input in further design and development activities. The City shall have ten (10) days after receipt of the Conceptual Drawings to review and approve or disapprove by written notice to the Developer building elevations of all portions of the building visible from the public right-of-way, and which Drawings the Parties acknowledge are intended to be consistent with the description of the Project set forth on Exhibit B. Failure of the City to give such written notice of approval or disapproval within the required period shall be deemed an approval of the Conceptual Drawings for purposes of this Agreement. The Developer acknowledges and agrees that the City has the right to require additional design elements that exceed current standards, provided that any such additional design elements requested by the City shall be subject to review and approval by the Developer and the City for feasibility and cost.

20.2 Construction Drawings. On or before one hundred twenty (120) days after the Effective Date (“Construction Drawings Submission Deadline”), Developer shall prepare and submit to the City for approval final construction drawings, plans and specifications and related documents for redevelopment of the Site and construction of the Project, which shall be a logical extension of and consistent with the approved Conceptual Drawings and shall be in sufficient detail to obtain a building permit (the “Construction Drawings”). The Construction Drawings shall identify and include all Eligible Public Improvements (including each element thereof and the building facade) and the estimated costs of the Eligible Public Improvements and each element thereof. The City shall have ten (10) days after receipt thereof to approve or disapprove by written notice to Developer the Construction Drawings on the basis of such Drawings’ consistency with the Conceptual Drawings and the estimated scope and costs of the Eligible Public Improvements set forth herein. Failure of the City to give written notice of approval or disapproval within the required period shall be deemed an approval of the Construction Drawings for the purposes of this Agreement. Developer may elect to extend the Construction Drawings Submission Deadline for up to two (2) additional sixty (60) day period(s) (each a “Construction Drawings Extension Period”). In the event Developer elects to exercise the Construction Drawings Extension Periods, the Developer shall provide the City with written notice of its election on or before the expiration of the Construction Drawings Submission Deadline or current Construction Drawings Extension Period and deposit an additional Ten Thousand and 00/100 Dollars (\$10,000.00) for each extension with the City within one (1) Business Day after said extension as Additional Earnest Money.

During the preparation of the Construction Drawings and prior to submission of the final Construction Drawings to the City for approval, the City and Developer shall hold such progress meetings to coordinate the preparation of, submission to, and review of the Construction Drawings by the City as may be reasonable and appropriate. Approval of progressively more detailed drawings and specifications will be promptly granted by the City if they are consistent with the Conceptual Drawings and are a logical extension of drawings that have been previously approved in the City’s reasonable judgment. During this process, the Developer and City shall communicate and consult informally as frequently as necessary to insure that formal submittal of Construction Drawings can receive prompt and speedy consideration.

If Developer desires to make any substantial change in the Construction Drawings after the City’s approval, Developer shall submit the proposed change to the City for its approval, which approval shall not be withheld so long as such change is consistent with the Conceptual Drawings and does not reduce the nature, scope and size of the Project as described on Exhibit B. Any such change shall be deemed approved by the City unless disapproved in whole or in part by written notice to the Developer setting forth the inconsistencies within five (5) Business Days after submission to the City.

20.3 Application for Building Permit. Within thirty (30) calendar days after City’s approval of the Construction Drawings, Developer shall submit an application to the City’s Current Planning and Building Divisions for a site development plan, building permit, and all other governmental approvals required to acquire, construct and install the Project in accordance with the Construction Drawings. City agrees to review and expeditiously process and act on applications submitted by Developer under this Section.

20.4 City's Right to Conceptual and Construction Drawings. In the event that Closing on the conveyance of the Developer Parcel does not occur for any reason other than default by the City, upon request by the City the Developer shall provide the Conceptual and Construction Drawings, or so much thereof as may exist at the time of such request, to the City and, subject to the approval of any third-party preparer thereof, the City shall have the right to ownership and utilization of such Drawings by itself or any third party for future redevelopment of the Site, provided that the City reimburses the Developer for the reasonable costs of preparing the Conceptual and Construction Drawings. Developer shall not have any liability to City or any third party user for any inaccuracy in or omission from the Conceptual and Construction Drawings, except as otherwise expressly agreed in writing and excluding any claims for fraudulent or intentional misrepresentation by Developer or its respective employees relating to such Conceptual and Construction Drawings.

21. Redevelopment of Site.

21.1 Commencement and Completion of Construction. Within forty five (45) days after Closing, Developer shall Commence Construction of the Project, including the Eligible Public Improvements, in accordance with the Construction Drawings. Developer shall thereafter diligently pursue and complete construction of Phase One of the Project in accordance with the approved Construction Drawings and obtain a certificate of occupancy for the first building completed in the Project from the City's Building Division ("Certificate of Occupancy") within 18 months of Commencing Construction of the Project, subject to Force Majeure, and subject to an extension of such date by the City Manager, in his sole discretion, for up to six months upon a showing of reasonable cause for such delay. In the event the City's Building Division shall notify the Developer of additional conditions to obtain the Certificate of Occupancy, the Developer shall not be in default hereunder so long as Developer is proceeding with reasonable diligence to satisfy such conditions.

If Developer:

- (i) fails to commence and pursue construction of Phase One of the Project as required in this Agreement for a period of one hundred twenty (120) days after written notice thereof from the City; or
- (ii) abandons or substantially suspends construction of Phase One of the Project for a period of one hundred twenty (120) days after written notice thereof from the City; or
- (iii) fails to obtain the Certificate of Occupancy as required herein;

then any such occurrence shall be deemed an Event of Default by the Developer to redevelop the Site and construct the Project as required by this Agreement.

21.2 City's Right to Inspect. For purposes of assuring compliance with this Agreement and to inspect and verify completion of the Project described herein, including the Eligible Public Improvements, representatives of the City shall have the right to enter the Site without charges or fees during normal construction hours during the period of construction. Upon

completion of each construction element approved as a part of the Eligible Public Improvements in the Construction Drawings, the Developer shall notify the City of such completion. The City, including such third party representatives or consultants as it may desire, shall inspect the Eligible Public Improvements within ten (10) Business Days after such notice to determine whether it has been satisfactorily completed and is acceptable to the City.

21.3 Cost and Conformity with Approved Drawings. The cost of redeveloping the Site and constructing the Project in accordance with the approved Construction Drawings shall be borne by the Developer, except with respect to the payment or reimbursement of Eligible Costs by the City as set forth in this Agreement. Developer shall carry out redevelopment of the Site and construction of the Project in substantial conformity with the approved Construction Drawings and all applicable laws.

21.4 No Transfer Before First Certificate of Occupancy. Except for a transfer or assignment to a special purpose entity as set forth in Sections 9.1.1 or 28.6 hereof, and except for the assignment to an Authorized Lender, (a) prior to the receipt of the first Certificate of Occupancy for any portion of Phase One, the Developer shall not transfer, convey, assign or lease or suffer any involuntary transfer of the whole or any part of the Site or the buildings or structures thereon without the prior written consent of the City, and (b) prior to the receipt of the first Certificate of Occupancy for any portion of Phase Two, the Developer shall not transfer, convey, assign or lease or suffer any involuntary transfer of the whole or any part of the Phase Two Parcel or the buildings or structures thereon without the prior written consent of the City, unless such transferee: (i) in the contract pursuant to which such portion of the Phase Two Parcel is being conveyed represents and warrants that the Phase Two Parcel will be developed as a hotel or office building, or other improvement acceptable to the City, and the City is a third party beneficiary to such representations and warranties, (ii) takes subject to the reconveyance rights of the City set forth in Section 12.8 hereof, and (iii) assumes the Developer's obligation to make Payments in Lieu of Taxes for such parcel as set forth in Section 18 hereof. In the absence of such written consent from the City, any such transfer, assignment or lease shall be deemed void and a material default under this Agreement and shall not relieve the Developer from any obligations under this Agreement until completion of the Project. The prohibition set forth herein shall not be deemed to prevent the granting of easements or permits to facilitate redevelopment of the Site and construction of the Project, to restrict the leasing of all or any part of a building or structure when such improvements are under construction, or to prevent the granting of a deed of trust, mortgage, or other security for financing permitted under Section 21.5 below or any transfer of all or any portion of the Project arising out of the exercise by an Authorized Lender of its remedies under any such deed of trust, mortgage, or other security interest, including, without limitation any foreclosure or delivery of a deed in lieu of foreclosure. The foregoing prohibition shall not apply to the Developer Parcel located in Phase One subsequent to the issuance of the first Certificate of Occupancy for any portion of Phase One and shall not apply to the Phase Two Parcel subsequent to the issuance of the first Certificate of Occupancy for any portion of Phase Two.

21.5 Authorized Lender; City's Right to Cure. Notwithstanding the provisions of Section 21.4, mortgages, deeds of trust, or similar conveyances required for any reasonable method of financing the Developer Improvements are permitted, but only for the purpose of securing loans of funds to be used for construction and/or permanent financing of the

redevelopment of the Site and construction of the Project. Developer shall submit its proposed financing for review and approval by the City Manager or his designee, which approval shall not be unreasonably withheld. Such proposed financing shall be deemed approved unless disapproved in whole or in part by written notice to the Developer setting forth the reasons therefor within five (5) Business Days after submission to the City. The holder of any mortgage, deed of trust, or other security interest authorized by this Section 21.5 (hereinafter referred to as an "Authorized Lender") shall have no obligation to construct or complete the Project or to guarantee such construction or completion, nor shall any covenant or other provision in the Deed for the Developer Parcel be construed to create such an obligation. However, nothing in this Agreement shall be deemed to construe, permit, or authorize an Authorized Lender or any successor or assign of an Authorized Lender to (i) construct any improvements on the Site or devote the Site to any uses other than those improvements and uses authorized by this Agreement; or (ii) devote the Developer Parcel to any uses prohibited by the Deed.

The City shall have the right to require that any such financing documents with an Authorized Lender contain a provision that, prior to completion of the Project, in the event of a default or breach by the Developer under any such financing documents, that the City shall be granted the right to cure the default prior to any foreclosure by the Authorized Lender. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Developer Parcel to the extent of such costs and disbursements. Any such lien shall be subordinate to mortgages, deeds of trust or other security instruments executed for the sole purpose of obtaining funds to redevelop the Site as authorized herein.

21.6 Notice of Default to Authorized Lender. If the City gives Developer any notice of default under this Agreement, the City shall, at the same time, deliver notice to any Authorized Lender that has notified the City of its interest in the Developer Parcel. Each such Authorized Lender shall have the right, at its option, to cure or remedy any such default within the same time as Developer may cure or remedy such default under this Agreement. Nothing in this Agreement shall permit or authorize an Authorized Lender to undertake or continue the construction or completion of the Project (beyond steps necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations hereunder by written agreement satisfactory to the City.

21.7 Obligations to Insure Project and to Reconstruct in Event of Damage or Destruction. Subject to the obligations of Developer to any Authorized Lender, Developer agrees to restore and reconstruct the portion of the Project owned by the Developer in the event of destruction of that portion of the Project, in whole or in part, due to fire or any other casualty and to maintain and keep in effect an insurance policy in an amount, form, and with an insurance company acceptable to the City to effect such restoration and reconstruction and which names the City as an additional insured. A copy of such insurance policy shall be provided by the Developer to the City at Closing. This requirement of the Developer to maintain insurance on the portion of the Project owned by the Developer shall be in full force and effect for so long as any Bonds remain outstanding, or any bonds or other obligations issued to refund the Bonds remain outstanding.

The City agrees, subject to annual appropriation, to restore and reconstruct the Parking Facility in the event of destruction of the Parking Facility, in whole or in part, due to fire or any other casualty and to maintain and keep in effect an insurance policy, or to provide self-insurance, in an amount sufficient to effect such restoration and reconstruction.

22. City's Representations and Warranties. The City hereby makes, as hereafter specifically stated, the following representations and warranties, each of which shall be true and accurate as of the Closing Date, and each of which shall be continuing and shall survive Closing subject to any applicable statute of limitations under Colorado law. Whenever a representation or warranty is being made "to the City's knowledge" such qualification indicates that the warranty is being made to the current actual knowledge of the employees of the City who have been involved with this matter, without any implied, imputed or constructive knowledge and without any independent investigation having been conducted by any of these employees. Except as expressly set forth in this Agreement, Developer agrees that the City has not made any other warranties or representations, express or implied, written or oral, concerning the Site. The City acknowledges that the representations and warranties contained in this Section 22 are material to Developer and will be relied upon by Developer in proceeding with this transaction.

22.1 Notices of Violation. Except to the extent disclosed in the Site Information, or disclosed to Developer through any Inspections of the Site or otherwise, to the City's knowledge, the City has not received a notice of any material violation of any law, rule, order, requirement, code, ordinance, statute, or regulation issued by any governmental agency, board, commission, authority or entity, or any insurance board of underwriters, and there has been no action in any court or in any governmental or administrative body on account thereof against or affecting the zoning, use, development, maintenance, condition or operation of the Site or any part thereof.

22.2 Authorization and Execution. The City has been duly organized and is validly existing as a home rule municipality under the laws of the State of Colorado. The person executing this Agreement on behalf of City is duly and validly authorized to do so on behalf of City, and City has full right and authority to enter into this Agreement and perform all of its obligations hereunder subject to the conditions precedent set forth in this Agreement. To the City's knowledge, execution of this Agreement will not result in any breach of, or constitute a default under, any contract or other agreement to which City is a party. To the City's knowledge, there is no action or proceeding pending or threatened in writing against City that challenges or impairs City's ability to execute or perform its obligations under this Agreement.

22.3 Possession. There are no existing leases of the Site and there will not be any third-parties in occupancy of the Site or any parts thereof on the Closing Date.

22.4 Condemnation. To the City's knowledge, no taking by power of eminent domain or condemnation proceedings has been instituted or threatened for the permanent or temporary taking or condemnation of all or any portion of the Site. To the City's knowledge, no moratoria or proceedings have been announced or initiated which might affect the availability, at regular rates and connection fees, of any utility, water or sewer service to the Site or affecting the issuance of any permits necessary or appropriate in connection with the use of the Site.

22.5 Litigation. To the City's knowledge, no litigation, proceeding or investigation has been filed against City or City's predecessors in title that arise out of the ownership of the Site and that would materially affect the Site, the use thereof, the title thereto, the City's ability to perform hereunder or the Developer's redevelopment of the Site pursuant to this Agreement. To the City's knowledge, City has not received written notice of any threatened litigation relating to the Site.

23. Developer's Representations and Warranties. Developer hereby makes the following representations and warranties, each of which shall survive the Closing subject to any applicable statute of limitations under Colorado law:

23.1 Authority to Execute; Organization. Developer has been duly organized and is validly existing as a Colorado limited liability company and is in good standing and authorized to do business in the State of Colorado. Developer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transaction contemplated herein. This Agreement has been, and all of the documents to be delivered by Developer at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligations of Developer, enforceable in accordance with their terms.

23.2 Conflicts and Pending Action. There is no agreement to which Developer is a party or to Developer's knowledge binding on Developer which is in conflict with this Agreement. There is no action or proceeding pending or, to Developer's knowledge, threatened against Developer which challenges or impairs Developer's ability to execute or perform its obligations under this Agreement.

23.3 No Encumbrance. Prior to the Closing, Developer shall neither encumber nor cause any liens to be created against the Site in any way, nor shall Developer, at any time prior to the Closing record this Agreement or a memorandum thereof.

23.4 Principal; Financial Resources. Developer is acting as a principal in connection with the transaction contemplated by this Agreement and, subject to obtaining financing prior to 180 days of the end of the Due Diligence Period, the Developer presently possesses and will possess as of the Closing the financial resources to finance the Developer Improvements for Phase One and any costs of the Eligible Public Improvements that exceed the Cap Amount, as contemplated by this Agreement.

23.5 No Reliance on Documents. Developer acknowledges and agrees that all materials, data and Site Information delivered by City to Developer in connection with this transaction are provided to Developer as a convenience only and that any reliance on or use of such materials, data and Site Information by Developer shall be at its sole risk. Neither City, nor the person or entity that prepared any report or reports delivered by City to Developer, shall have any liability to Developer for any inaccuracy in or omission from any such reports, except as otherwise expressly agreed in writing by such person or entity and excluding any claims for fraudulent or intentional misrepresentation by City or its employees relating to such materials, data or Site Information.

23.6 Developer's Investigation. Except for the express representations and warranties of City set forth herein, Developer acknowledges and agrees that there are no representations or warranties of any kind whatsoever, express or implied, made by City in connection with this Agreement, the conveyance of the Developer Parcel to the Developer, the physical condition of the Site, whether the Site complies with applicable laws, or whether the Site is appropriate for Developer's intended use. At or prior to the end of the Due Diligence Period, Developer will have (or will have chosen not to have) fully investigated the Site and all matters pertaining thereto. Except for the express representations and warranties and contractual obligations of the City set forth herein, Developer also acknowledges and agrees that: (i) Developer is not relying on any statements or representations of the City and its officers, employees, agents, consultants or its representatives; (ii) Developer, in entering into this Agreement and in financing the Developer Improvements and completing its construction of the Project, is relying entirely on its own investigation of the Site; (iii) at or prior to the end of the Due Diligence Period, Developer will be aware (or chosen not to be aware) of all zoning regulations, other governmental requirements, prior and current Site and physical conditions, and other matters affecting the use and condition of the Site; and (iv) Developer's decision, at or prior to the end of the Due Diligence Period, of whether to accept conveyance of the Developer Parcel and construct the Project on the terms and conditions hereof shall be made solely in reliance on the City's express representations and warranties in this Agreement, on the City's contractual obligations hereunder, and on Developer's review, inspection and investigation of the Site and of materials, documents, information and studies relating to the Site. **EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF THE CITY SET FORTH HEREIN, THE CONVEYANCE OF THE DEVELOPER PARCEL AS PROVIDED FOR HEREIN IS MADE ON A STRICTLY "AS IS" "WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS" AS OF THE CLOSING DATE, AND THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SITE, ANY IMPROVEMENTS LOCATED THEREON OR ANY SOIL CONDITIONS RELATED THERETO.**

24. Release. Except for claims based on breach of the City's representations and warranties in Section 22, the breach of the City's contractual obligations set forth in this Agreement, and except for claims arising from the City's negligence, gross negligence, willful misconduct or fraud (the "Reserved Claims"), Developer, for itself and Developer's successors, lessees and assigns (collectively, "Developer's Assigns"), hereby releases the City from, and waives, any and all claims and liabilities against the City for, related to, or in connection with, any prior or current environmental or physical condition of the Site (or the presence of any matter or substance relating to the environmental condition of the Site), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances previously or now located in, at, about or under the Site, or for any and all claims or causes of action (actual or threatened) based upon, in connection with, or arising out of, the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, and as it may be further amended from time to time, the Federal Resource Conservation and Recovery Act, as amended and as it may be further amended from time to time,

the Colorado Hazardous Waste Act, as amended, and as it may be further amended from time to time, or any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action) related to environmental matters or liability with respect to, or affecting, the Site. Upon Closing, Developer and Developer's Assigns shall assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions, may not have been revealed by Developer's investigations, and upon Closing Developer and Developer's Assigns, shall be deemed to have waived, relinquished and released the City and their successors from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorney fees and court costs) of any and every kind or character, known or unknown, which Developer or Developer's Assigns might have asserted or alleged against the City, at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental laws) and any and all other acts, omissions, events, circumstances or matters regarding the Site, with the exception of the Reserved Claims. Developer acknowledges and agrees that the waivers, releases and other provisions contained in this Section 24 were a material factor in City's conveyance of the Developer Parcel to the Developer and the City's agreement to pay or reimburse Eligible Costs in accordance with this Agreement, and provide the other economic incentives as set forth herein, and that City is unwilling to convey the Developer Parcel to Developer and provide such payments and incentives unless City is released as expressly set forth above. Developer, with Developer's counsel, has fully reviewed the disclaimers and waivers set forth in this Agreement, and understands the significance and effect thereof. The terms and conditions of this Section 24 will expressly survive the Closing and will not merge with the provisions of any Closing documents, and shall survive any termination of this Agreement.

25. Events of Default: Remedies.

25.1 Events of Default. Each of the following events shall constitute an Event of Default under this Agreement:

(a) The Events of Default set forth in Section 21.1 hereof relating to the redevelopment of the Project by the Developer;

(b) Any representation or warranty made by any Party in this Agreement proves to have been untrue or incomplete in any material respect when made and which untruth or incompleteness would have a material adverse effect upon any other Party; and

(c) Any Party fails in the performance of any other covenant in this Agreement and such failure continues for 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. If such default is not of a type which can be cured within such 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 following the end of such thirty (30) day period to cure such default, provided that

such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

25.2 Remedies. Except as otherwise provided herein, upon the occurrence and continuation of an Event of Default hereunder, the non-defaulting Party's remedies shall be limited to the right to 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 payment of sums owing hereunder, and no other remedy, and no Party shall be entitled to or claim damages for an Event of Default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages. In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions hereof, the prevailing party in such litigation or other proceeding may obtain, as part of its judgment or award, its reasonable attorneys' fees and costs.

Notwithstanding the foregoing, in the event City fails to perform its obligation to convey the Developer Parcel to the Developer in accordance with the terms and provisions of Section 9.1 above and such failure is not the result of a failure to satisfy the conditions precedent to such conveyance, or a breach or default by Developer under this Agreement, in addition to the remedies set forth above, Developer shall be entitled, subject to appropriation by the City, to reimbursement or payment from the City in an amount equal to the lesser of (a) \$1.7 million, or (b) the actual costs reasonably incurred by the Developer in the furtherance of the Project through the date of the City's breach, which costs include but are not limited to, architectural, engineering, design, entitlement, tax and legal expenses. If the City pays the amounts due to the Developer pursuant to this paragraph, the Developer agrees that it shall provide the City with all architectural, engineering or other plans, specifications or drawings prepared by the Developer, or on its behalf, in connection with the proposed improvements to the Site, any engineering reports, soil test reports, environmental reports, surveys, topographic surveys, market studies, feasibility studies and any other studies or reports conducted with respect to any portion of the Site or its use or development prepared by the Developer or on its behalf, the costs of which are being reimbursed or paid to the Developer by the City pursuant to this paragraph. The Developer shall have no obligation or liability concerning the contents of such materials or their accuracy or completeness.

Notwithstanding the foregoing, in the event that the Developer fails to accept conveyance of the Developer Parcel in accordance with the terms and provisions of Section 9.1 above and such failure is not the result of a failure to satisfy the conditions precedent to such conveyance or a breach or default by the City under this Agreement, in addition to the remedies set forth above, the City shall be entitled to payment or reimbursement from the Developer in an amount equal to the lesser of \$250,000, or (b) the actual costs reasonably incurred by the City in furtherance of the Project through the date of the Developer's breach, which costs include but are not limited to, legal fees and expenses. The Developer shall have no obligation to pay or reimburse the City for any of its costs incurred to abate environmental conditions on the Site or to demolish structures on the Site.

26. Notices. Any notice or report required or desired to be given regarding this Agreement shall be in writing and may be given by personal delivery, by certified mail return receipt requested, by courier service, or by facsimile (provided such notice is also given by personal delivery or courier service). Any notice or report addressed to Developer or City at their respective addresses set forth below shall be deemed to have been given (i) when personally delivered, (ii) if properly addressed and deposited in the mail (certified, return receipt requested) on the first Business Day after the date shown on the return receipt for acceptance or rejection, (iii) if properly addressed and deposited with a reputable overnight carrier, on the Business Day next following the date of deposit, or (iv) if properly addressed and sent by facsimile transmission, on the day of receipt by the sender of a "confirmation copy" of the facsimile transmission (confirming transmission of all pages), provided that (a) a copy of such facsimile notice is also sent on the same date by certified mail or overnight courier, and (b) if the date on which such facsimile notice is given falls on a Saturday, Sunday or federally-recognized holiday, then such date shall automatically be extended to the next Business Day thereafter. The parties may also agree to alternative means of providing written notice, including electronic mail.

A copy of each notice to City shall be delivered to:

City Manager
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537
Facsimile No.: 970-962-2900

with a copy to:

City Attorney
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537
Facsimile No.: 970-962-2900

A copy of each notice to Developer shall be delivered to:

Kevin Brinkman
Brinkman Partners, LLC
3528 Precision Drive, Suite 100
Fort Collins, CO 80528
Facsimile No.: 970-206-1011
Email: Kevin.Brinkman@brinkmanpartners.com

With a copy to:

Ryan S. Thorson
Gast Johnson & Muffly P.C.
323 South College Avenue, #1
Fort Collins, CO 80524
Email: rthorson@gjmlawfirm.com

27. Termination. Upon the occurrence of any of the following events, this Agreement may be terminated in accordance with the provisions hereinafter set forth:

(a) In the event that the Developer Parcel is not conveyed to the Developer by the Required Closing Date, subject to Force Majeure, then the City or the Developer shall have the option to terminate this Agreement.

(b) In the event that the Developer does not Commence Construction of the Project within 45 days of Closing, subject to Force Majeure, then the City or the Developer shall have the option to terminate this Agreement.

(c) Any other event occurs hereunder that expressly provides or allows for a party to terminate this Agreement.

Except as otherwise provided herein, in order to terminate this Agreement, (a) a Party shall provide written notice of such termination to the other Party, and (b) such termination shall be effective thirty (30) days after the date of such notice unless prior to such time, the Parties are able to negotiate in good faith to reach an agreement to avoid such termination.

Upon a termination of this Agreement, each of the Parties shall have no further obligation or liability to the other Parties under this Agreement, save and except for the Surviving Obligations and any other obligations that are stated herein to survive termination.

28. Miscellaneous.

28.1 Delegation of Authority for City Approvals. The City hereby delegates to the City Manager or his designee the authority to: (1) review and approve or disapprove, as permitted by this Agreement, the Conceptual Drawings, Construction Drawings (including the Eligible Public Improvements), and Developer's proposed financing; (ii) waive any conditions precedent set forth in this Agreement for the benefit of the City, and (iii) for good cause shown, grant requests for extensions of time to satisfy requirements set forth in this Agreement.

28.2 Time. Time is of the essence of each and every term, provision and covenant of this Agreement. Except as expressly provided otherwise herein, the expiration of any period of time prescribed in this Agreement shall occur at 11:59 p.m. of the last day of the period. Should any period of time prescribed herein end on a Saturday, Sunday or legal holiday (as recognized by the Federal government), the period of time shall automatically be extended to 11:59 p.m. (or such other time as is expressly provided herein) of the next full Business Day.

28.3 No Waiver. No waiver by any party of the performance or satisfaction of any covenant or condition herein shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder.

28.4 Entire Agreement. This Agreement, together with that Purchase and Sale Agreement dated October 4, 2016 related to 130 North Cleveland, contains the entire agreement between the Parties regarding the conveyance of the Developer Parcel and the redevelopment and construction of the Project on the Site, and supersedes all prior agreements, whether written or oral, between the Parties regarding the same subject including, without limitation, the ENA and the term sheet among the Parties.

28.5 Amendment. This Agreement may be amended only by an instrument in writing signed by the Parties.

28.6 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of City and Developer; provided, however, that except for assignments to Authorized Lenders and as hereafter provided, Developer shall not, prior to the issuance of the first Certificate of Occupancy for any portion of the Project, assign Developer's rights, benefits and/or obligations pursuant to this Agreement to any party or transfer a controlling interest in Developer without the prior written consent of the Council. Any such assignment without the Council's prior written consent shall be deemed null and void and without any affect and shall be considered a material default of this Agreement. Notwithstanding the foregoing or any provision to the contrary contained herein, the City recognizes that Developer may form, together with its investors, a separate, special purpose entity or entities to develop, own and/or operate all or a portion of the Project or the Eligible Public Improvements to be constructed thereon and that one or more assignments of all or any part of Developer's rights under this Agreement may be required in connection with such activities and any such assignment or transfer of the Developer's rights under this Agreement to any such special purpose entity will not require any consent by the City. However, no assignment of this Agreement by Developer, whether or not such assignment requires the consent of the City, shall relieve Developer of its personal and primary obligation to perform all of the obligations to be performed by Developer hereunder.

28.7 Survival. The waiver, release, indemnity, insurance, redevelopment and public improvement cost incentive provisions of this Agreement and the other obligations expressly stated herein to survive Closing, shall survive the Closing and shall not merge with the delivery of the Deed. As set forth herein, certain obligations will survive the termination of this Agreement, including without limitation, waiver, release and indemnity provisions.

28.8 Severability. In the case that any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

28.9 Captions. Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

28.10 Exhibits. All exhibits attached to this Agreement shall be incorporated by reference as if set out herein in full.

28.11 Relationship of the Parties. The Parties acknowledge that no party is an agent for any other party and that no party shall or can bind or enter into agreements for the other Parties.

28.12 Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the Parties hereto acknowledge that there are legal constraints imposed upon the City by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and by the City's Charter and Code, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall the Parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall only be in the District Court for Larimer County, Colorado.

28.13 Review by Counsel. The Parties acknowledge that each party and its legal counsel have reviewed and approved this Agreement, and the Parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

28.14 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall only be effective if the same agreement is, or identical counterparts are, signed by the City and the Developer.

28.15 Third-Party Beneficiaries. This Agreement is solely for the benefit of the Developer, the City and its respective members, principals, partners and successors and no third party shall be entitled to the benefit of any of the provisions of this Agreement; provided, however, that to the extent that Bonds are issued and outstanding, the Bond Trustee shall be deemed to be a third party beneficiary hereunder.

28.16 Facsimile or PDF Signatures. City and Developer each (i) has agreed to permit the use from time to time, where appropriate, of facsimile or emailed pdf signatures in order to expedite the transaction contemplated by this Agreement, (ii) intends to be bound by its respective facsimile or emailed pdf signature, (iii) is aware that the other will rely on the facsimile or emailed pdf signature, and (iv) acknowledges such reliance and waives any defenses to the enforcement of this Agreement and the documents affecting the transaction contemplated by this Agreement based on the fact that a signature was sent by facsimile or emailed pdf only.

28.17 Mutual Cooperation and Good Faith. The Parties each agree to execute, acknowledge and deliver or to cause to have executed, acknowledged and delivered, such other and further instruments and documents as may reasonably be requested another party to carry out this Agreement. Each party hereto shall use its good faith efforts to cause satisfaction of all conditions to its obligation under this Agreement, and to exercise good faith in fulfilling its obligations under this Agreement.

28.18 Disclosure. Developer understands and acknowledges that under the Colorado Open Records Act, C.R.S. §§ 24-72-201 et al., (“CORA”) this Agreement is subject to public inspection. In addition to the public inspection requirements of CORA, the Developer also understands and acknowledges that the Colorado Open Meetings Law, C.R.S. § 24-6-402, (“COML.”) may also require a disclosure of the terms and conditions of this Agreement at public meetings of the Council. Therefore, any such disclosures of the terms and conditions of this Agreement under CORA or COML are permitted under this Agreement and shall not be considered a breach of any provision of this Agreement. Additionally, Developer understands and acknowledges that if and to the extent the disclosure under CORA or COML requirements are in conflict with this Agreement, then the disclosure requirements under CORA and/or COML shall be deemed to control.

28.19 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

28.20 Recording. This Agreement shall not be recorded in any place or office of public record and any action by a party in violation of this provision shall be deemed to be a material default hereunder; provided, however, that the filing of this Agreement as part of any proceedings instituted in any court of proper jurisdiction to enforce the provisions of this Agreement shall not be deemed to be a breach of this Section 28.20. Notwithstanding the foregoing, a memorandum of agreement setting forth the restrictions on conveyance set forth in this Agreement may be executed by the Parties and recorded upon the Effective Date. A Notice of Termination of such memorandum of agreement shall be filed upon the issuance of the first Certificate of Occupancy for the Project.

28.21 Attorney Fees and Costs. If any party commences an action to enforce or interpret any portion of this Agreement, the prevailing party in such action shall be paid by the non-prevailing or defaulting party the prevailing party’s costs and reasonable attorney fees, to be awarded by the court.

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the date set forth above.

CITY:

CITY OF LOVELAND,
a Colorado home rule municipality

By: Stephen Adams
City Manager

ATTEST:

[Signature]
Deputy City Clerk



APPROVED AS TO FORM:

[Signature]
City Attorney

DEVELOPER:

The Foundry Loveland, LLC,
a Colorado limited liability company

By: Brinkman Entity Management, LLC,
a Colorado limited liability company
its Manager

By: Brinkman Real Estate Services, LLC
a Colorado limited liability company
its Manager

By: 
Kevin Brinkman, Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

The Site consists of (a) the Developer Parcel, including the Phase Two Parcel (which will be conveyed by the City to the Developer pursuant to the terms and provisions of this Agreement), (b) the City Parcel (which will be retained by the City and on which the Parking Facility will be constructed) and (c) 130 North Cleveland that was previously conveyed by the City to the Developer. The general depictions of the Developer Parcel, the Phase Two Parcel, the City Parcel and 130 North Cleveland Avenue are as follows:

Developer Parcel - *See Exhibit A-1*

Phase Two Parcel - *See Exhibit A-2*

City Parcel - *See Exhibit A-3*

130 North Cleveland Avenue - *See Exhibit A-4*

Exhibit A-1
Developer Parcel

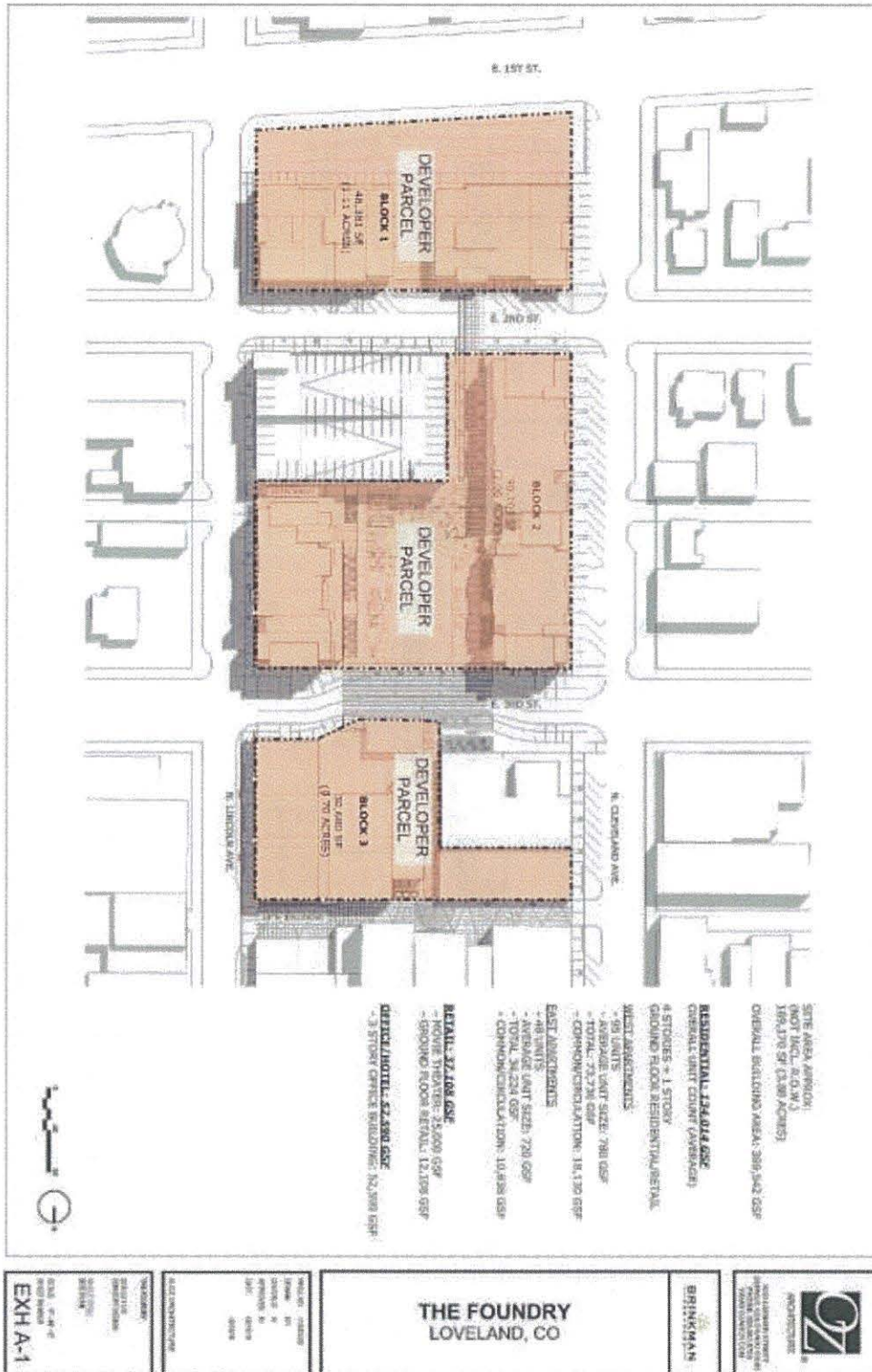
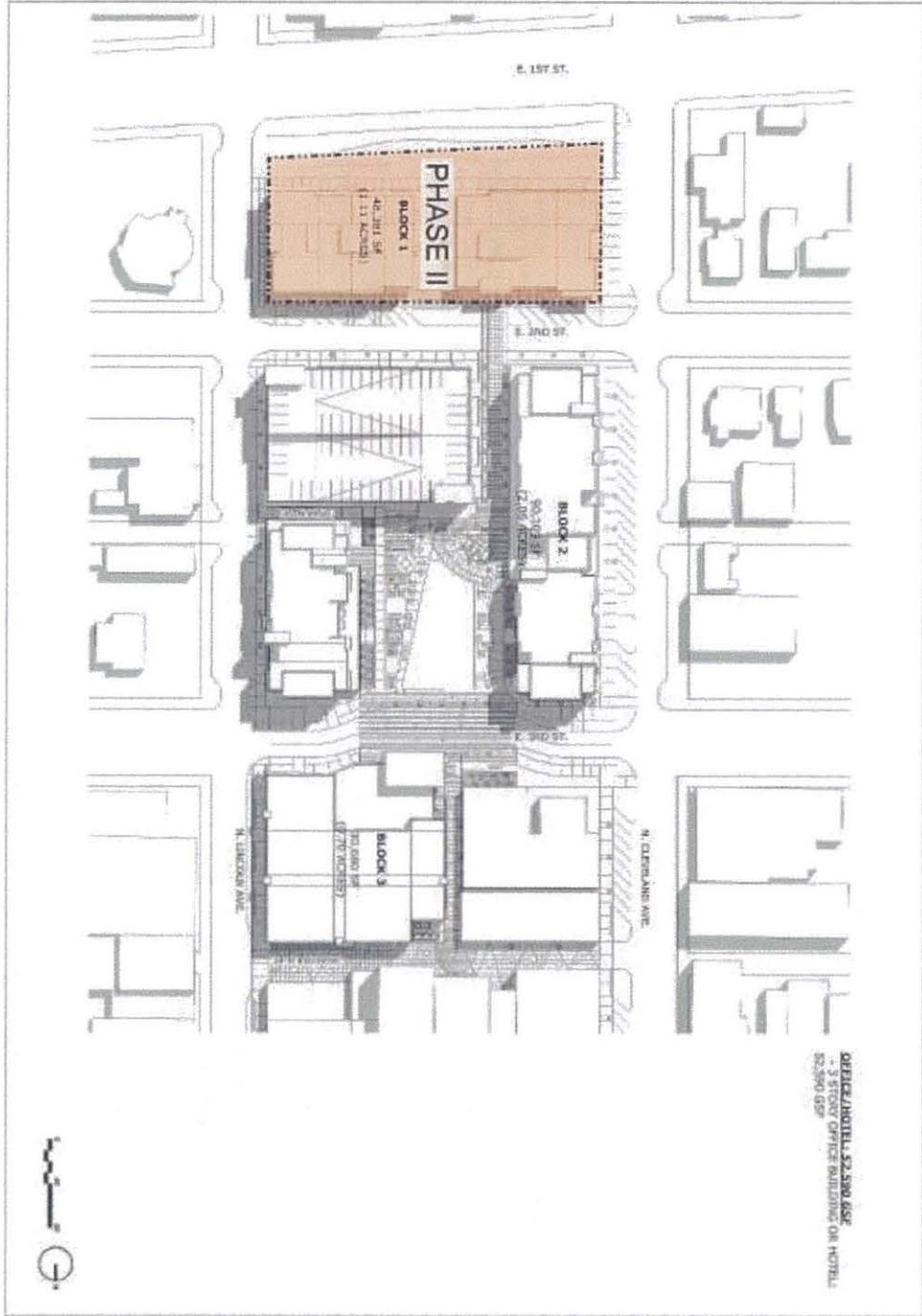


Exhibit A-2
Phase Two Parcel

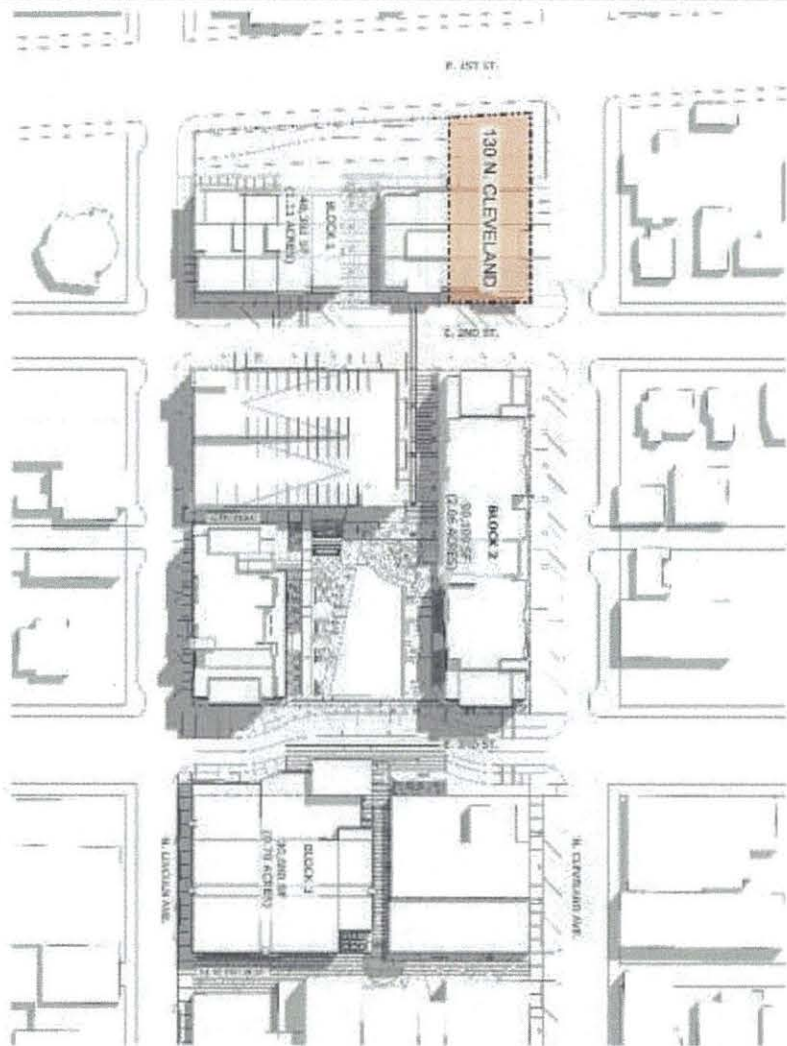


	<p>BRINKMAN</p>	<p>THE FOUNDRY LOVELAND, CO</p>	<p>EXH A-2</p>
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Exhibit A-3
City Parcel



Exhibit A-4
 130 N. Cleveland Avenue



<p>DATE: 11-14-12 PROJECT: 130 N. CLEVELAND AVENUE EXH A-4</p>	<p>REVISIONS: 0001 - 11/14/12 0002 - 11/14/12 0003 - 11/14/12</p>	<p>THE FOUNDRY LOVELAND, CO</p>	<p>BRINKMAN</p>	
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EXHIBIT B

DESCRIPTION OF THE 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. 59,150 square feet of office or 53,000 square feet of hotel
3. 155 residential units
4. 14,000 square feet of retail/service uses
5. Parking Structure with a minimum of 460 parking spaces
6. Two Public plazas, subject to final development plan
7. Improvements to the alleyway and streetscapes immediately adjacent to project area

Phase One generally consists of the improvements set forth in Exhibit B-1.

Phase Two generally consists of the improvements set forth in Exhibit B-2.

A Description of the Developer Improvements is generally set forth in Exhibit B-3.

A Description of the Parking Facility, including Design and Costs, is generally set forth in Exhibit B-4.

A Description of the Public Plaza is generally set forth in Exhibit B-5.

Exhibit B-1
Phase One generally consists of the improvements set forth below

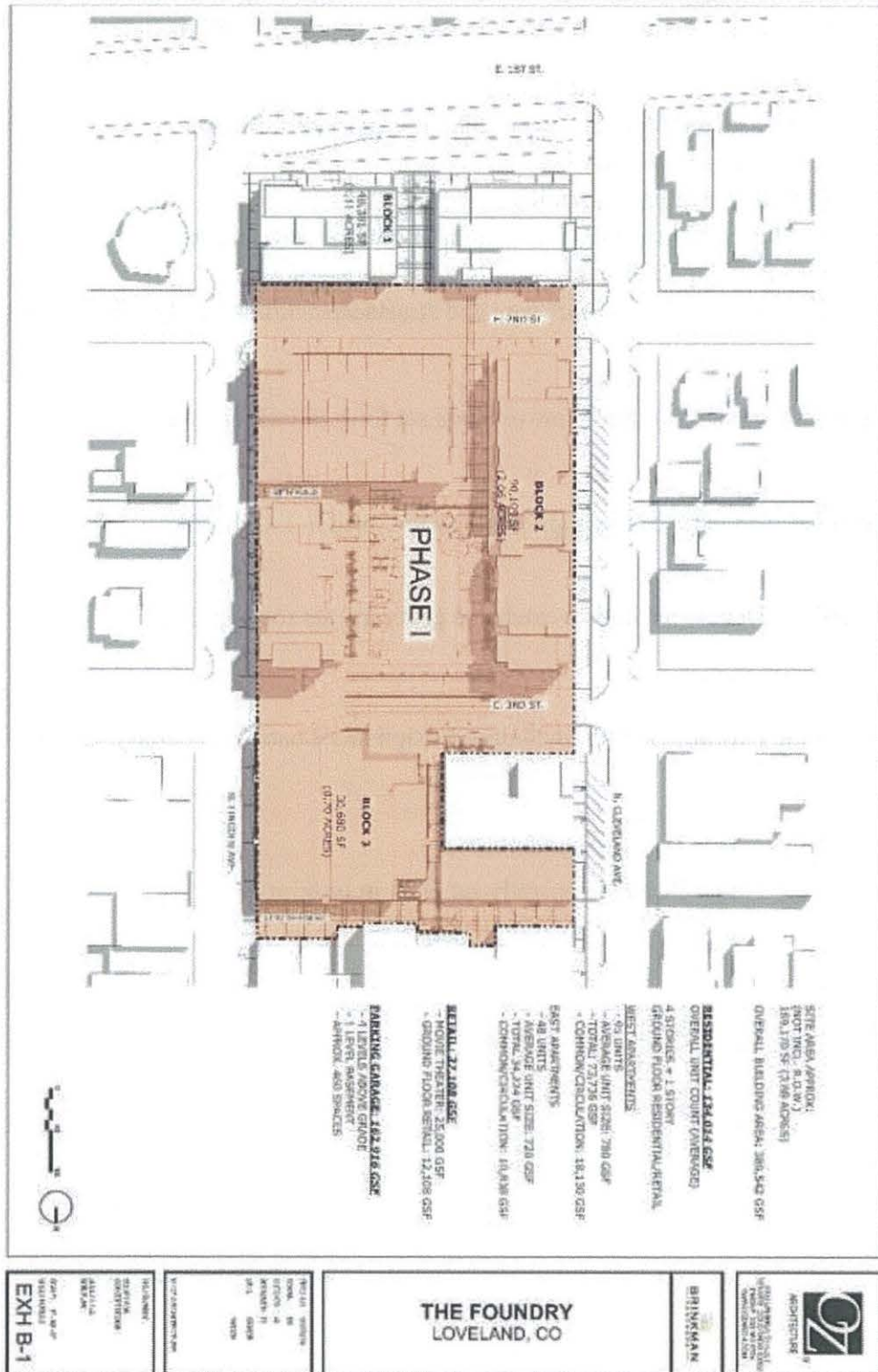


Exhibit B-2
 Phase Two generally consists of the improvements set forth below

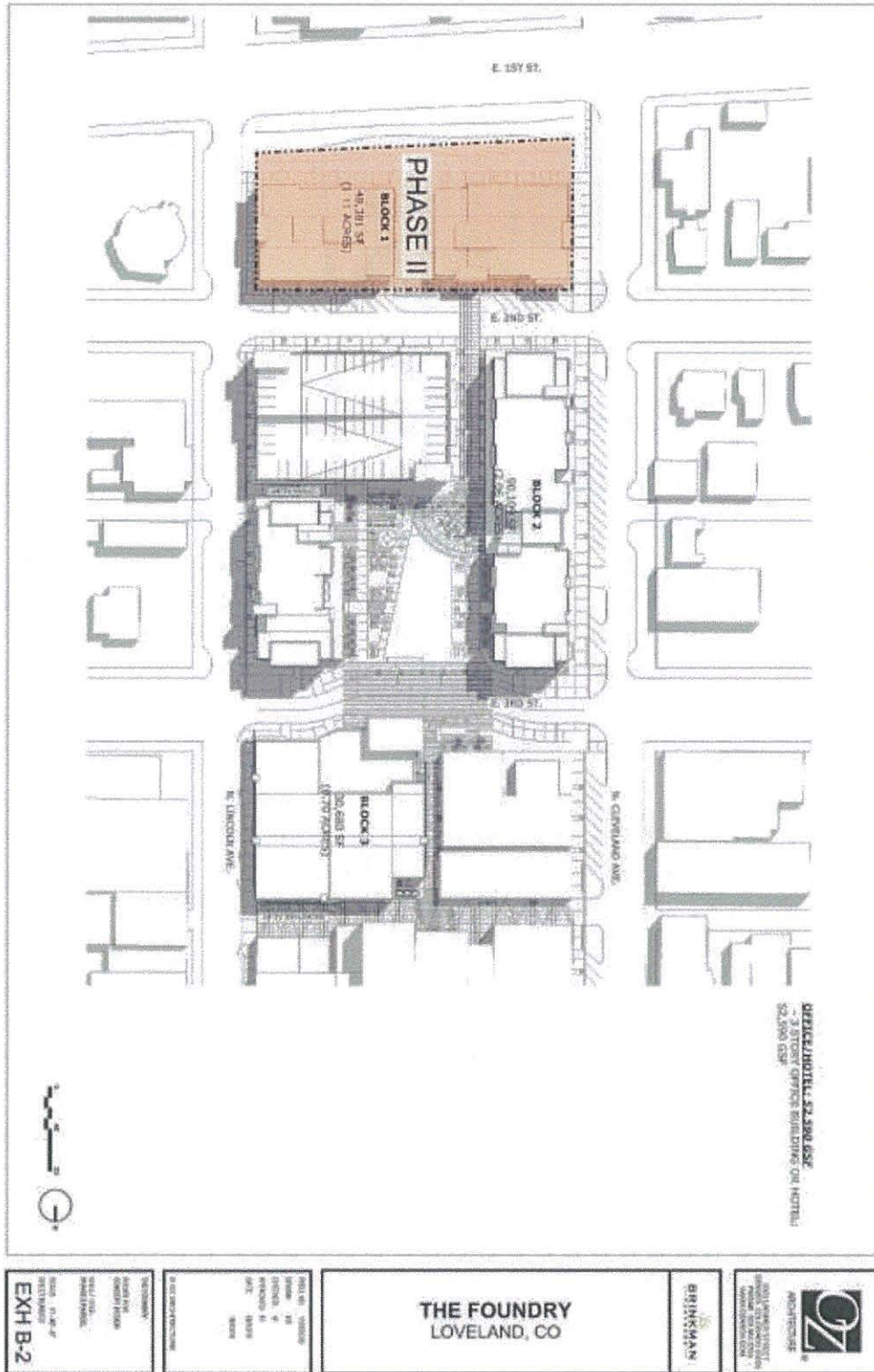


Exhibit B-4
 A Description of the Parking Facility is generally set forth below



EXHIBIT C

FORM OF DEED

THIS SPECIAL WARRANTY DEED is made this ___ day of _____, 2017, between the CITY OF LOVELAND, COLORADO, a Colorado home rule municipality (“Grantor”), and THE FOUNDRY LOVELAND, LLC., a Colorado limited liability company (“Grantee”), whose address is _____.

WITNESSETH, that Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, and conveyed and by these presents does grant, bargain, sell, and convey to Grantee, subject to the exceptions, restrictions and reservations hereafter described, that certain real property located in Larimer County, Colorado, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Property”):

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereof, to the same belonging or in any way appurtenances thereof, to the same belonging or in any way appertaining, to the only proper use and benefit of Grantee in fee simple.

THIS DEED is made expressly subject to the title exceptions set forth on Exhibit B attached hereto and incorporated herein by reference (collectively, the “Title Exceptions”).

GRANTEE ACKNOWLEDGES AND AGREES, that in accepting this deed, it does for itself and its successors and assigns, covenant and agree with Grantor and its successors, notwithstanding any applicable City of Loveland, Colorado, zoning ordinances to the contrary, to the following use restrictions for the Property or any portions thereof (collectively, the “Deed Restriction”):

No portion of the Property or any building, structure or improvement presently or subsequently erected on the Property, shall be used for any of the following uses: (a) indoor housing or raising of animals; (b) pawn shops; (c) skateboard park; (d) retail motor vehicle sales, rental or repair; (e) check cashing or payday loan businesses; (f) manufacturing or processing of an end product from a natural raw material source, whether animal, mineral or vegetable (g) tattoo parlors; (h) self-storage units; (i) gun stores; (j) recycling collection and / or processing facilities; (k) retail car wash; (l) clubs or lodges (provided that a hotel shall not be considered a lodge for purposes hereof); (m) crematorium; (n) junkyard; (o) jails, detention and penal centers and facilities; (p) retail gas station; (q) long-term care facilities; (r) dairy processing plant; (s) laundry and dry-cleaning plants; (t) retail cannabis or cannabis related businesses including growing operations; and (q) retail laundry and dry-cleaning establishments.

Grantee agrees that this Deed Restriction shall attach to and run with the Property and that Grantor and its successors shall be entitled to judicially enforce this Deed Restriction by mandatory injunction and any other remedy available at law or in equity. Grantee and Grantor

agree, for themselves and their respective successors and assigns, that venue for any judicial action to interpret or enforce the Deed Restriction shall only be in the District Court for Larimer County, Colorado.

SUBJECT TO real property taxes for the current year, encumbrances created by Grantee or Grantee's agents, and the Title Exceptions, Grantor agrees to warrant and forever defend the right and title to the Property to the Grantee against the claims of all persons claiming by, through or under Grantor, and not otherwise.

GRANTEE, for itself and its successors, lessees and assigns (collectively, "Grantor's Assigns"), hereby releases the City from, and waives, any and all claims and liabilities against Grantor for, related to, or in connection with, any prior or current environmental or physical condition of the Property (or the presence of any matter or substance relating to the environmental condition of the Property), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances previously or now located in, at, about or under the Property, or for any and all claims or causes of action (actual or threatened) based upon, in connection with, or arising out of, the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, and as it may be further amended from time to time, the Federal Resource Conservation and Recovery Act, as amended and as it may be further amended from time to time, the Colorado Hazardous Waste Act, as amended, and as it may be further amended from time to time, or any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action) related to environmental matters or liability with respect to, or affecting, the Property. Grantee and Grantee's Assigns hereby assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions, may not have been revealed by Grantee's investigations, and Grantee and Grantee's Assigns, hereby waive, relinquish, and release Grantor from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorney fees and court costs) of any and every kind or character, known or unknown, which Grantee or Grantee's Assigns might have asserted or alleged against the Grantor, at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental laws) and any and all other acts, omissions, events, circumstances or matters regarding the Property, with the exception of claims based on breach of the Grantor's express representations and warranties set forth in Section 22 of the Disposition and Redevelopment Agreement dated December 13, 2016 pertaining to the Property.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed on the day and year first above written.

GRANTOR:

CITY OF LOVELAND, COLORADO, a Colorado home rule municipality

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Stephen C. Adams as City Manager of the City of Loveland, Colorado, and Teresa G. Andrews as City Clerk of the City of Loveland, Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[Attach Exhibit A – Legal Description of Property and Exhibit B – Title Exceptions]

EXHIBIT D

ELIGIBLE PUBLIC IMPROVEMENTS

Eligible Public Improvements

The Eligible Public Improvements shall consist of the design, development, acquisition, installation and construction of the following:

- a. Parking garage, to include the parking located below the mixed use building located on Cleveland Avenue
- b. Main public plaza shown in Exhibit B-5
- c. South plaza shown in Exhibit B-5
- d. All streets, sidewalks, landscaping, street furniture, irrigation within the Foundry project
- e. "Back Stage Alley"
- f. Connection corridor between 3rd Street and "Back Stage Alley"

Eligible Costs

The following are estimated Eligible Costs for the design, acquisition, construction and installation of the Eligible Public Improvements, including without limitation, reasonable and customary soft costs and expenses related to the design, acquisition, construction and installation of the Eligible Public Improvements.

The payment or reimbursement to the Developer will be based on actual Eligible Costs for the Eligible Public Improvements after they have been certified in accordance with the Procedure for Documenting, Certifying and Paying Eligible Costs as outlined in Exhibit G to this Agreement. Regardless of the total actual Eligible Cost of the Eligible Public Improvements, the total amount to be paid or reimbursed under this Agreement for Eligible Costs related to the Eligible Improvements shall not exceed the Cap Amount, as it may be adjusted pursuant to this Agreement, plus Eligible Accrued Interest and Eligible Financing Costs.

Reimbursements for any line item set forth below may exceed the estimated cost so long as the reimbursement total for all Eligible Costs for the Eligible Improvements does not exceed the Cap Amount.

Parking garage	\$13,676,367
Main plaza	\$3,070,331
South plaza	\$847,699
Streets, sidewalks, landscaping, street furniture, irrigation	\$982,489
"Back Stage Alley" (included in the Streets/sidewalks cost)	
Connection corridor between 3 rd Street and "Back Stage Alley" (included in Street/sidewalks cost)	

EXHIBIT E
MINIMUM PROPERTY TAX INCREMENT REVENUES

1. Minimum total 2019 Property Tax levied to be paid in 2020 \$ 417,483
2. 2020 Property Tax Base Payment Escalated by 2% \$425,833
 Additional 2020 Property Tax levied to be paid in 2021 \$204,716
3. Minimum Total 2020 Property Tax levied to be paid in 2021 \$630,549
4. Minimum Total Property Tax to be paid in subsequent years escalates by 2% per year through the final year of 2046:

		Total Guaranteed Payment Allocated to the Six Elements of the Project						
Levy Year	Payment Year	Total Guaranteed Payment	Commercial		Cleveland Mixed Use		Lincoln Mixed Use	
			Movie Theater	Office or Hotel	Residential	Non-residential	Residential	Non-residential
2019	2020	\$417,483	\$167,274	\$0	\$107,206	\$35,028	\$69,246	\$38,729
2020	2021	\$630,549	\$170,620	\$204,716	\$109,350	\$35,728	\$70,631	\$39,504
2021	2022	\$643,160	\$174,032	\$208,811	\$111,537	\$36,443	\$72,043	\$40,294
2022	2023	\$656,023	\$177,513	\$212,987	\$113,768	\$37,172	\$73,484	\$41,100
2023	2024	\$669,144	\$181,063	\$217,246	\$116,043	\$37,915	\$74,954	\$41,922
2024	2025	\$682,526	\$184,684	\$221,591	\$118,364	\$38,674	\$76,453	\$42,760
2025	2026	\$696,177	\$188,378	\$226,023	\$120,731	\$39,447	\$77,982	\$43,615
2026	2027	\$710,101	\$192,146	\$230,544	\$123,146	\$40,236	\$79,542	\$44,488
2027	2028	\$185,261	\$50,130	\$60,147	\$32,128	\$10,497	\$20,752	\$11,607
2028	2029	\$188,966	\$51,132	\$61,350	\$32,771	\$10,707	\$21,167	\$11,839
2029	2030	\$192,745	\$52,155	\$62,577	\$33,426	\$10,921	\$21,590	\$12,075
2030	2031	\$196,600	\$53,198	\$63,829	\$34,094	\$11,140	\$22,022	\$12,317
2031	2032	\$200,532	\$54,262	\$65,105	\$34,776	\$11,363	\$22,463	\$12,563
2032	2033	\$204,543	\$55,347	\$66,408	\$35,472	\$11,590	\$22,912	\$12,815
2033	2034	\$208,634	\$56,454	\$67,736	\$36,181	\$11,822	\$23,370	\$13,071
2034	2035	\$212,806	\$57,583	\$69,090	\$36,905	\$12,058	\$23,837	\$13,332
2035	2036	\$217,062	\$58,735	\$70,472	\$37,643	\$12,299	\$24,314	\$13,599
2036	2037	\$221,404	\$59,909	\$71,882	\$38,396	\$12,545	\$24,801	\$13,871
2037	2038	\$225,832	\$61,108	\$73,319	\$39,164	\$12,796	\$25,297	\$14,148
2038	2039	\$230,348	\$62,330	\$74,786	\$39,947	\$13,052	\$25,802	\$14,431
2039	2040	\$234,955	\$63,576	\$76,281	\$40,746	\$13,313	\$26,318	\$14,720
2040	2041	\$239,654	\$64,848	\$77,807	\$41,561	\$13,579	\$26,845	\$15,014
2041	2042	\$244,448	\$66,145	\$79,363	\$42,392	\$13,851	\$27,382	\$15,315
2042	2043	\$249,336	\$67,468	\$80,950	\$43,240	\$14,128	\$27,929	\$15,621
2043	2044	\$254,323	\$68,817	\$82,569	\$44,105	\$14,411	\$28,488	\$15,933
2044	2045	\$259,410	\$70,193	\$84,221	\$44,987	\$14,699	\$29,058	\$16,252
2045	2046	\$264,598	\$71,597	\$85,905	\$45,887	\$14,993	\$29,639	\$16,577

The minimum required property tax revenue *includes* property tax from the imposition of the anticipated 25 mills for debt service by the metropolitan district.

EXHIBIT F

SITE INFORMATION PROVIDED TO DEVELOPER

- Asbestos abatement clearance certificates for each property.
- Asbestos/Demolition close out documents including all manifests, permits, and other activities they performed by the General Abatement Contractor.
- Storm Water Management Plan
- Site As-Builts
- Pollution liability policy
- The Department of Oil and Public Safety (OPS) NFAs for the Underground Storage Tanks removed at:
 - 201 North Lincoln Ave
 - 123 N Lincoln Ave.
- Soils Characterization study for 201 North Lincoln Ave.
- The Colorado Department of Public Health and Environment (CDPHE) monitoring plan for 270 E 3rd, 319 N Lincoln and 201 N Lincoln Ave
- Pinyon Environmental - Phase II studies
- Pinyon Environmental - final letter
- Voluntary Clean Up Plan – Leslie the Cleaner

EXHIBIT G

PROCEDURE FOR DOCUMENTING, CERTIFYING AND PAYING ELIGIBLE COSTS

1. Applicability. All capitalized terms that are not specifically defined in this Exhibit G shall have the same meaning as defined in the Agreement. The Parties recognize and acknowledge that in connection with issuance and sale of Bonds, the Bond Documents may establish a different procedure for the requisition of Bond proceeds, in which event that procedure shall be substituted for the procedure in this Exhibit G to the extent that they conflict with the procedures in this Exhibit G; provided, however, the Parties agree to cooperate so that the Bond Documents will include a procedure for certifying the Eligible Costs payable under in-process construction and other contracts to permit Bond proceeds to be applied to direct payments under such contracts.

2. Engineer; City Verification. The City will select an independent licensed engineer experienced in the design and construction of public improvements (the "Engineer"). The Engineer shall be responsible for reviewing, approving, and providing the certificate required by paragraph 3 hereof. For purposes of assuring compliance with the Agreement, representatives from the City shall have reasonable rights of access to the Site and the Project without charges or fees at normal construction hours during the period of construction. Access shall include the right of inspection and field verification of Eligible Public Improvements for which requests for payments are submitted. The Engineer selected by the City and any representatives of the City that will be inspecting and verifying Eligible Public Improvements shall be identified in writing to the Developer.

3. Documentation. The Developer shall be responsible for documenting all Eligible Costs. Eligible Costs may be certified when a pay application has been submitted by a contractor that complies with the procedure set forth in this Exhibit or upon completion of construction of an Eligible Public Improvement. All such submissions shall include a certification signed by both the Engineer and an authorized representative of the Developer. The certificate shall state that the information contained therein is true and accurate to the best of each individual's information and belief and, to the best knowledge of such individual, qualifies as Eligible Costs. Such submissions shall include copies of backup documentation supporting the listed cost items, including bills, statements, pay request forms from first-tier contractors and suppliers, conditional lien waivers, and copies of each check issued by the Developer for each item listed on the statement. Unless required by a Developer construction contract then being performed, statements for payment of Eligible Costs shall not include advance payments of any kind for unperformed work or materials not delivered and stored on the Property.

4. Verification, Submission, and Payment. Each payment request will be submitted by the Developer to (a) the City Manager, or his designee, and (b) the Bond Trustee to the extent that such payment request is to be paid from the proceeds of Bonds, for review within ten (10) business days. Such review is for the purpose of verifying that the work represented in each payment request and supporting documentation complies with the applicable requirements of this Agreement and the Bond Documents. Upon the earlier of approval of such documentation or

expiration of the 10-business day period, the City Manager, or his designee, shall allocate the Eligible Costs to the Eligible Public Improvements according to the category for each listed in Exhibit D and compile an aggregate running total of the Eligible Costs in each category. Thereafter, the City or the Bond Trustee, as the case may be, will make payments of Eligible Costs to the Developer as provided in this Agreement. So long as the payment request is properly certified according to this procedure payment shall be made within twenty days of submission of the payment request.

The Developer shall submit no more than one payment request per month.

If a requisition is made by the Developer in accordance with this Exhibit G and the City or the Bond Trustee object that the requisition does not comply with the provisions of this Agreement or the applicable Bond Documents, and the objection is made on the basis of incomplete or insufficient documentation, the Developer shall promptly provide complete and sufficient documentation in a good faith effort to facilitate resolution. The parties shall cooperate in good faith to resolve any dispute concerning the payment or reimbursement of Eligible Costs, but without being obligated to waive or relinquish any rights hereunder. If the parties have not satisfactorily resolved any such dispute within ten (10) business days, the City or the Bond Trustee, as applicable, may withhold the amounts in dispute from payment and shall process and pay the remainder of the undisputed Eligible Costs, and the parties shall continue in good faith to resolve any remaining dispute.

EXHIBIT H

REIMBURSEMENT TO CITY FROM MOVIE THEATER REVENUES

Pursuant to Section 17.1 of this Agreement, the City has agreed to provide the Movie Theater Incentive in a total amount not exceeding \$2,189,944 to be paid over a 10 year period, in accordance with the terms and provisions of the Agreement. The Developer and the City have agreed that, following a 10% return on equity to the Developer, audited annually at the option of the City, the City shall share equally in the revenue generate from the Movie Theater in excess of this amount. The concept of carry forward shall apply. For example, should the return on equity in a given year fall below 10%, this deficit will be “carried forward” prior to the sharing of revenues with the City.

EXAMPLE

In the event that the theater revenues reach \$550,000 in Effective Gross Income (hypothetical) and total expenses are \$200,000, resulting in a 11.67% return, the City of Loveland shall be paid one-half of 1.67% (amount above 10%).

Developer investment of equity in Movie Theater	\$3,000,000
<i>10% annual Cash on cash return required before split</i>	<i>\$300,000</i>
Annual effective Gross Income:	\$550,000
<u>Expenses:</u>	<u>\$200,000</u>
<i>Net income</i>	<i>\$350,000</i>
<i>Less amount net income required for 10% return</i>	<i>\$300,000</i>
Cash-on-cash return - ($\$350,000/\$3,000,000$ investment) = 11.67%	
Amount to be split between the City of Loveland and the Developer	\$50,000
<i>City of Loveland payment</i>	<i>\$25,000</i>