



WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY

P.O. BOX 381, Windsor, CO 80550

www.windsordda.com

SPECIAL BOARD OF DIRECTORS MEETING

November 29, 2016 – 12:00PM NOON

301 Walnut Street, First Floor Conference Room, Windsor, CO 80550

Agenda

- A. Call to Order
- B. Roll Call
- C. Public Invited to be Heard
- D. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board
- E. Resolution 2016-DDA03 - A Resolution Approving an Agreement for Economic Incentives and Inducements Between and Among the Windsor, Colorado, Downtown Development Authority, the Town Of Windsor, Colorado, and Old Windsor Mill, LLC, with Respect to the Redevelopment of the Windsor Mill and Elevator Property
- F. Resolution 2016-DDA04 - A Resolution Approving an Intergovernmental Agreement between the Windsor, Colorado, Downtown Development Authority and the Town of Windsor, Colorado, Modifying the March 14, 2016 Intergovernmental Agreement between said Parties Regarding Funding for Redevelopment of the Windsor Mill and Elevator Property
- G. Resolution 2016-DDA05 - A Resolution Approving a Façade Easement Agreement between the Windsor, Colorado, Downtown Development Authority and Old Windsor Mill, LLC, with Respect to the Redevelopment of the Windsor Mill and Elevator Property
- H. Adjourn



WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY

Date: November 22, 2016
To: Downtown Development Authority Board of Directors
From: Matt Ashby, DDA Executive Director
Re: Mill Incentive Package – Staff Report

This memo provides the DDA Board with an overview of three key documents associated with the incentives being offered to support redevelopment of the Windsor Mill, located at the southwest corner of 3rd and Main Street. The three documents provide for assistance and confirmation of the primary concepts and principles associated with the transaction of funds, along with performance measures required of the developer, and include:

1. Intergovernmental Agreement. This document is between the Town and the DDA. It provides for the transfer from the Town to the DDA of \$1,840,000 to fund public improvements and eligible façade expenses needed for redevelopment of the Mill. This agreement also defines that 100% of the Mill Project Sales Tax will flow to the Town.
2. Incentive Agreement. This is a three-party agreement between the DDA, the Town and the Developer describing the financial incentives to be provided to the Developer in connection with the Mill redevelopment.
3. Façade Easement Agreement. This agreement is between the DDA and the Developer and provides for the purchase of façade easements over eligible facades of the redeveloped Mill, with the purchase price to be paid over time from 50% of the property tax increment revenues generated by redevelopment of the Mill.

Approval of these resolutions would provide authorization of the Board Chairman to execute these agreements. Approval would also designate authority to the executive director and legal counsel to make minor changes to the agreements to clarify language, subsequent to approval, so long as such changes do not change the intent of the agreements.

Intergovernmental Agreement Review

This document amends the IGA between the Town and the DDA which was amended in March of 2016 to extend the Town's support in terms of providing the sales tax base plus sales tax increment to the DDA through 2021. The amendment provides for the transfer of \$1,840,000 from the Town for the purposes of constructing public and eligible façade improvements associated with the project. These funds are to be used in conjunction with \$500,000 from the DDA.

The developer will be establishing an escrow account funded with a total of \$2,340,000 (\$1,840,000 + \$500,000) which will serve as a guarantee on the public funds. This escrow account will allow the public funds to be paid directly to the contractor prior to all improvements being completed. Should the conditions described in the agreements not be met, the public funds will be replaced with the escrowed funds. Contingencies include the following: that the developer to



WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY

obtain a certificate of occupancy, that 50% of the building has been leased for 5-years, and that a façade easement executed with the DDA.

The second key component to this IGA amendment is that the DDA is providing the Town with control over the sales tax generated by the Mill project. (No other properties in the DDA will be impacted by this agreement.) This provision will enable the Town to utilize up to 50% of the sales tax to provide for \$606,000 in tax increment financing to the project, with any remaining funds being returned to the Town. The DDA will utilize property tax increment to provide \$754,000 to the project. Following the completion of payments, the Town will retain the entire sales tax from the project.

Since the Incentive Agreement provides for fifty percent (50%) of both the Project Sales Tax increment and the Project Property Tax Increment to be reimbursed annually to the Company, and since it is uncertain how much each tax increment source will annually produce, there may be a need for a reconciliation of the amounts which have actually been paid from each fund against the Town and DDA tax increment maximums. The IGA provides for a reconciliation process to make either party whole.

In considering the use of DDA Reserves for the purposes of constructing public improvements and eligible façade improvements associated with the project, it is important to note restrictions on these funds. Within the agreement, it is clearly stated that the funds will be used for public improvements and eligible façade improvements. These include things like sidewalk, landscaping within the right of way, and curb extensions. These public improvements will benefit the overall DDA district in meeting our mission of promoting the health, safety, prosperity, security, and general welfare of the inhabitants in the DDA, while preventing deterioration of property values to encourage economic investment. DDA support for advancing redevelopment of the Mill was also supported in the DDA's Strategic Plan 2016-2018. The Mill can be described as a "catalyst project" which would be unlikely to succeed without support from the DDA, but which is likely to have a significant positive financial impact on the DDA.

Staff has reviewed the requested adjustments to the IGA and feels there is sufficient evidence to indicate that use of DDA Reserves as contemplated in this agreement are viable should the DDA Board wish to approve the amendment.

Sample Motion: I move to **approve/amend/deny** the Intergovernmental Agreement between the Town and the Downtown Development Authority modifying the March 14, 2016 Intergovernmental Agreement regarding funding for redevelopment of the Windsor Mill and Elevator Property.

Incentive Agreement Review

This document is a three-party agreement between the Town, the Company, and the DDA, and could be considered the primary agreement stating the terms and conditions. This agreement states the total contribution to the Company from the DDA (\$500,000) and the Town (\$1,840,000), along with conditions for payment of these funds. The DDA will administer payment



WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY

of these funds, with any remaining funds returned to the Town who will distribute toward other remaining project costs.

This document also describes the payment to the Company of sales tax increment (\$606,000 from the Town) and property tax increment (\$754,000 from the DDA) toward the project. 50% of the increment amounts is to be paid annually until a total of \$1,360,000 has been paid to the Company. Since it is uncertain how much each tax increment source will produce annually, there may be a need for a reconciliation of the amounts which have actually been paid from each fund against the Town and DDA tax increment maximums. The IGA provides for a reconciliation process to make either party whole.

Also described are applicable fee waivers, provisions for record keeping and audits, assignment of the benefits and remedies for default.

In arriving at the tax increment figures identified in the Incentive Agreement, the Town and DDA retained the services of a third party advisor to guide discussions in establishing a reasonable figure for the project's funding gap. As was acknowledged in the 2014 Mill Feasibility Study, recommendations indicated the Mill could be restored for an estimated \$9.2 million, and that "identifying funding is the biggest challenge facing the redevelopment effort." The study went on to acknowledge that the best options would include private investment "and public funding as needed to bridge gaps." Based upon analysis of existing comparable lease rates in the DDA and estimated revenues of similar businesses, the funding gap was identified.

Due to the deteriorating condition of the building, restoration of the Mill has been considered critical to advancing the overall health and welfare of Windsor. Communities looking to spur investment in downtown often identify what's called a "catalyst" project. These projects are usually high profile buildings that will become an anchor to demonstrate the viability of the downtown to other investors and businesses. In addition to restoration of the mill being one of the most frequently requested projects by Windsor residents, its blighted appearance has a chilling effect on the overall profitability of Downtown. With the restoration of the Mill, significant financial returns will encourage additional investment, while boosting sales tax and property tax revenues that support the ongoing efforts of the Town and Downtown Development Authority.

Based upon these considerations, the DDA Board would be well within their charge under state statutes to extend support to the project, should ratification of this incentive package proceed.

Sample Motion: I move to **approve/amend/deny** the Agreement for Economic Incentives and Inducements between the Town of Windsor, the Windsor Downtown Development Authority, and the Old Windsor Mill, LLC.

Façade Easement Agreement Review

This agreement provides structure to the façade easement, which serves as the vehicle for DDA investment in the private investments in the Mill by the Company on eligible facades. It outlines the procedural requirements for the Company to receive reimbursement from property tax



WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY

increments as described in the Agreement for Economic Incentives. The period of the easement is 25-years. The agreement also describes the Company's obligations, including maintenance, environmental conditions, tenant notification of easement restrictions, term, covenants, annual appropriations, and assignment of the easement.

In considering the funding request, Policy I.A. identifies that the Board may consider investments in façade improvement projects within the DDA boundary which increase property tax increment. The FTIP provides funding based on either the total project costs, the supportable property tax Increment or the cost of eligible project features in accordance with the Project Funding Guidelines set forth in Policy V.A.1. up to 50% of the estimated tax increment revenues.

The project has been reviewed by several town departments over the course of developing a package that supports the redevelopment. On October 12, 2016 the DDA Board approved a letter of intent describing a general intent to support the project with both Capital Improvement funds for public improvements associated with the project as well as Tax Increment funds via the Façade Improvement Program.

Review of the conceptual design under Policy IV: Project Evaluation Criteria include the following considerations:

- 1) Quality of Materials: *This criteria evaluates if the quality of materials are authentic, high quality and timeless.* The materials presented in the conceptual drawings appear to meet this requirement, including possible reuse of brick from the original building and a blend of new materials that complement the overall timelessness of the structure.
- 2) Pedestrian Friendly Street Presence: *This criteria relates to the front façade of a building and the transparency, windows, articulation of the frontage.* The primary entrance feature for the building faces Main Street, with new landscaping along Main Street and 3rd Street, including detached sidewalk and street trees. A new corner extension is proposed at the intersection to frame diagonal parking, and to shorten the length of pedestrian crossing distances on both streets in anticipation of higher volumes of traffic (both pedestrian and vehicular) once the project is completed. Several patio spaces are also visible adjacent to the pedestrian realm on the west side of the building, along 3rd Street, and the alley that will help to engage the public and private realms to interact with one another. Patio space along the alley will also likely serve to welcome patrons from the south.
- 3) Timeless Design: *This criteria looks to assess whether an improvement will provide complimentary design and authenticity to the district.* Although more targeted toward new construction, this element is applicable to the current application in terms of considering whether the newly constructed (or reconstructed) elements support the historic nature of the district. As mentioned above in the discussion of materials, the restoration of the historic portions of the building has been discussed with History Colorado and appears to be in concert with this provision.
- 4) Historic Fabric of the building and immediate environs: *This criteria relates to historic buildings and encourages façade changes that are local landmarks receive approval of the Historic Preservation Commission.* Again, History Colorado is reviewing the



WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY

- proposed changes to the structure. Formal review will occur with the submittal of final construction documents. The Windsor Historic Preservation Commission will review the proposal during the development review process with the Town.
- 5) Green Building Principles: *This criteria encourages green design.* Historic revitalization projects have long been recognized as the greenest of projects by diverting demolition waste from the landfill and minimizing manufacturing waste created during the fabrication of new materials.
 - 6) Deconstruction: *This criteria encourages demolition methods that minimize construction waste.* Minimal deconstruction is anticipated.
 - 7) Location: *This criteria identifies that the location in advancing the DDA goals may be a factor.* The application is in a highly visible location at the eastern gateway into the district. The structure is also one of the most recognized buildings in Windsor and has long been requested to receive attention in terms of revitalization. The project is also highly visible from Town Hall.
 - 8) Use: *This criteria contemplates the use and whether it advances the Board's goals.* Reuse of the Mill into an active brewery, restaurant and offices will greatly contribute to activating the DDA during both daytime and evening hours. The brewery, with associated activities possibly including tours and retail sales are likely to draw tourists to the district. The formalization of a music venue (associated with the grain bin stage area and patio) will create an opportunity for concerts to help enliven downtown and attract new patrons to area retailers. Additional restaurant(s) will also create more reasons for residents and visitors to take a look at Windsor for destination dining.
 - 9) Consistency with DDA Mission and Plan of Development: *The mission and plan of development provide a broad cross section of elements to consider. In reviewing this application, the DDA Board should consider how this application could have benefits to creating a "prosperous, vibrant, energetic, and clean town center."* This proposal will increase the overall property and sales tax base for the district and encourages additional customer traffic in the district, which will benefit area businesses. The proposed uses will add entertainment opportunities to the mix while restoring and rehabilitating an historic building to contribute to a positive town image.

Overall, this application appear that it could successfully addresses all of the criteria contained within the Façade Improvement Program policy guidelines. It also appears that several of the building facades on the Mill and Annex building could be included in the program. The addition of a public access easement on the west may create sufficient public visibility of the west façade to include it in the program.

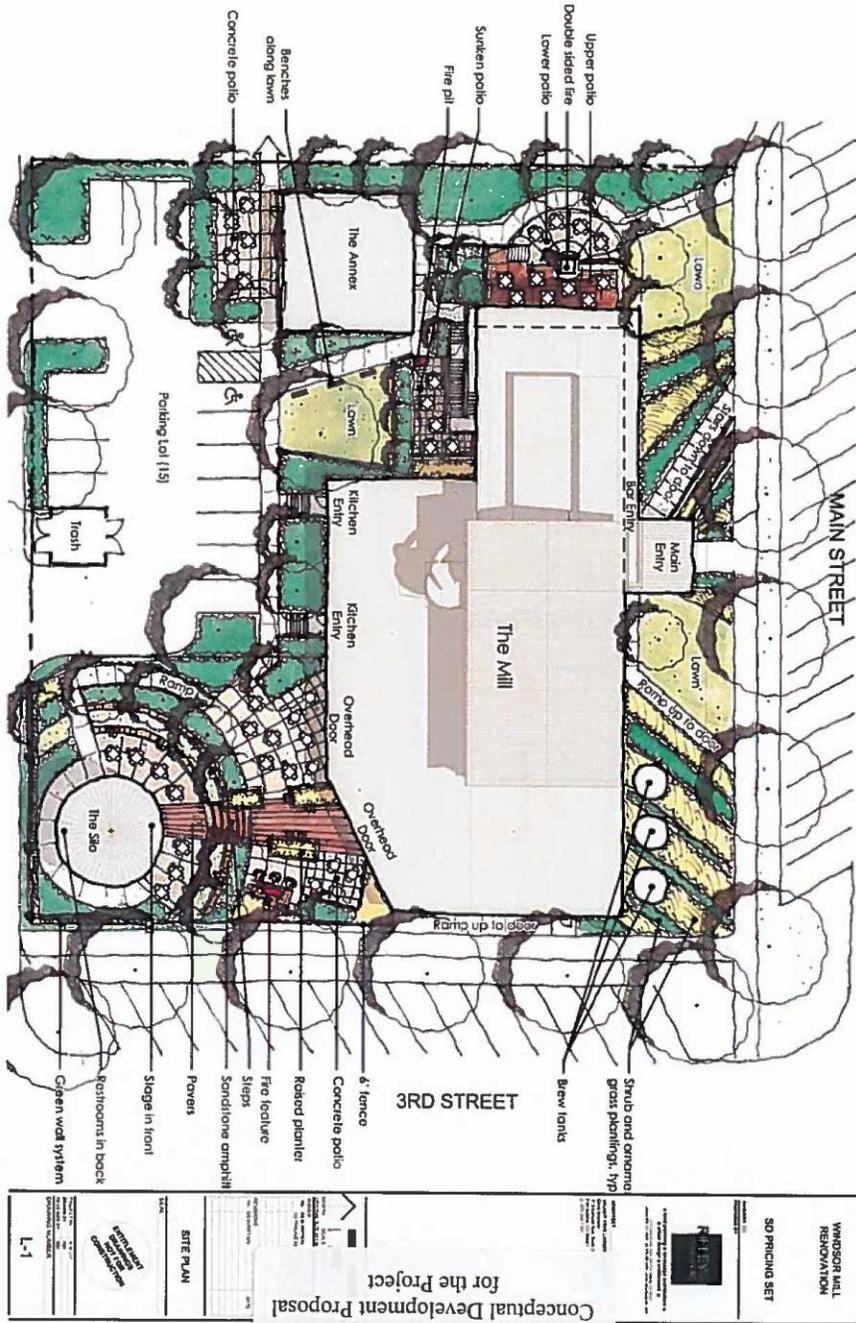
Final review of the application will commence when final construction documents are completed. Should the DDA Board wish to approve this façade easement agreement, the following motion may be considered.

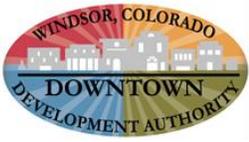
Sample Motion: I move to **approve/amend/deny** the Façade Agreement between the Windsor Downtown Development Authority and the Old Windsor Mill, LLC.



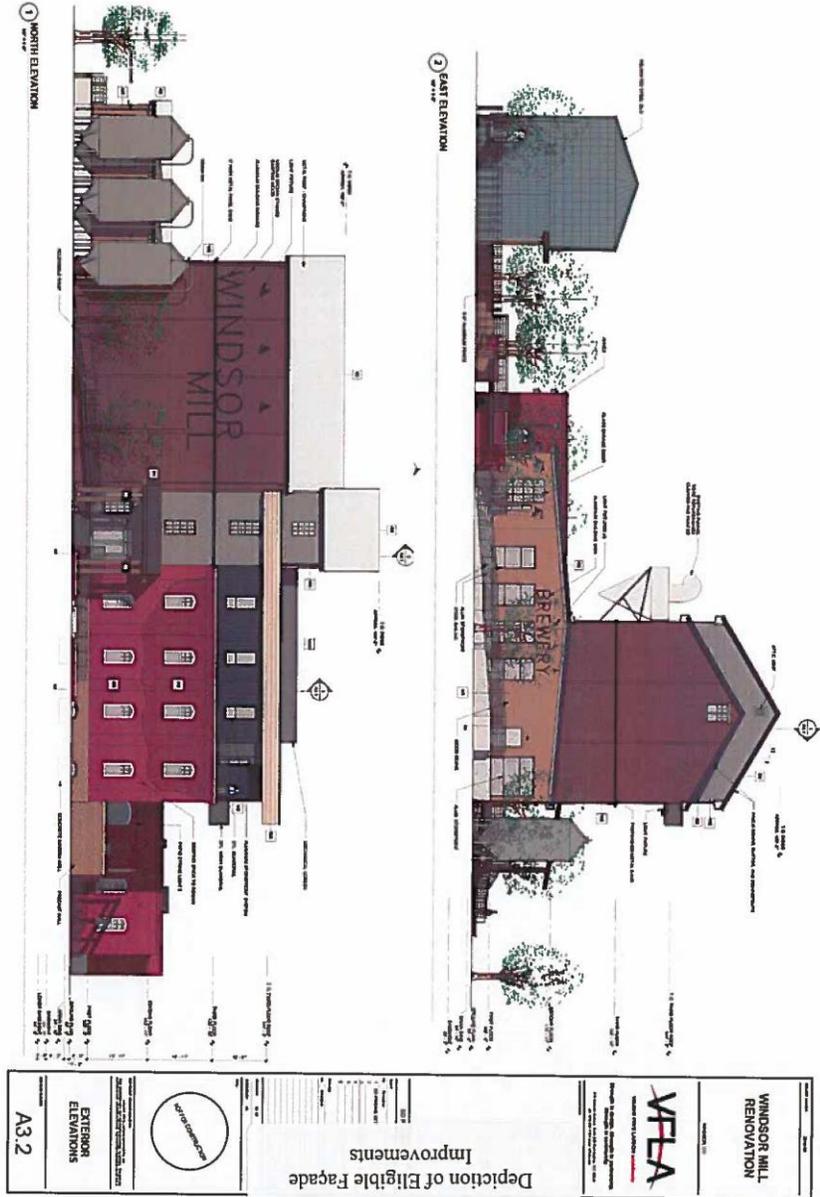
WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY

Appendix A: Site Plan & Elevations





WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY



**AGREEMENT FOR ECONOMIC INCENTIVES
AND
INDUCEMENTS**

THIS AGREEMENT FOR ECONOMIC INCENTIVES AND INDUCEMENTS (“Agreement”) is entered into this ___ day of _____, 2016, by and among the TOWN OF WINDSOR, a Colorado home rule municipal corporation (“Town”), the WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY, a duly organized and existing downtown development authority under the Constitution and laws of the State of Colorado, including, particularly, Title 31, Article 25, Part 8, Colorado Revised Statutes, as amended (“DDA”), and OLD WINDSOR MILL, LLC, a Colorado limited liability company (“Company”).

RECITALS

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

WHEREAS, pursuant to Ordinance No. 2011-1401, the Town has heretofore established the DDA, a duly organized and existing downtown development authority under the Constitution and laws of the State of Colorado, including, particularly, Title 31, Article 25, Part 8, Colorado Revised Statutes, as amended; and

WHEREAS, the Town has approved the June 15, 2011, Plan of Development of the DDA pursuant to Resolution No. 2011-26; and

WHEREAS, the Plan of Development contains a provision for division of taxes as authorized by the DDA Act effective for a period of thirty (30) years beginning June 27, 2011; and

WHEREAS, the Company is considering acquisition of and improvements to the historic Windsor Mill and Elevator property, the legal description of which is set forth in Exhibit A, attached hereto and incorporated herein by this reference as if set forth fully (“Property”); and

WHEREAS, the Property, located at the southeast corner of 3rd Street and Main Street, contains the Windsor Mill and Elevator structure built in 1899 and used as a flour and feed mill until 1990 (“Mill”); and

WHEREAS, the Mill stands as a landmark structure in the downtown and shapes a lasting impression of Windsor to both residents and visitors; and

WHEREAS, the Mill was significantly damaged by a tornado in May, 2008, with the resulting damage and associated costs of repair greatly hindering restoration efforts; and

WHEREAS, the deteriorating state of the Mill has been the subject of ongoing community discussion, including mention as a critical action item in the Town's 2016-2018 Strategic Plan, with the stated initiative to "Partner with a developer to renovate and establish a commercially viable entity at The Mill;" and

WHEREAS, the Property is located in the DDA District; and

WHEREAS, a 2014 Feasibility Study was completed by the DDA with assistance from the Colorado Department of Local Affairs to explore the viability of reusing the Mill with recommendations presented that indicated the Mill could be restored for an estimated \$9.2 million, and that "identifying funding is the biggest challenge facing the redevelopment effort," indicating that the best options would include private investment "and public funding as needed to bridge gaps;"

WHEREAS, the Company has presented to the Town a conceptual development proposal for redevelopment of the Property generally consisting of a brewpub, cocktail bar and dining facility open to the public, and office space available for rental occupancy, which is depicted on Exhibit B attached hereto and incorporated herein by reference as if set forth fully (the "Project"); and

WHEREAS, the Project is a valuable undertaking that furthers the objectives set forth in the Town's 2016 Comprehensive Plan, including the restoration of the Mill, increased tax revenue, and overall improvements to the Town's Main Street in the downtown area; and

WHEREAS, providing economic inducements and incentives is an appropriate exercise of municipal governmental authority under Title 31, Article 15 of the Colorado Revised Statutes; and

WHEREAS, the redevelopment of the Property is a top priority of the DDA's 2016 Strategic Plan, which has been adopted by the DDA Board; and

WHEREAS, according to the Town's independent fiscal analysis, the Project will bring increased retail sales tax and *ad valorem* property tax revenue to the Town and the DDA and enabling the expansion of the DDA's programs and initiatives to create a prosperous downtown; and

WHEREAS, the cost premium for rehabilitating an existing historic structure (as opposed to new construction) inherently creates a lease premium that results in lease rates nearly double that of existing downtown rates, demonstrating the funding gap to be bridged to bring restoration of the Mill to fruition; and

WHEREAS, the Town and the DDA consider the Project to be a catalyst project which will create increased interest and investment in surrounding properties in the downtown; and

WHEREAS, the Company has requested that the Town and the DDA enter into this Agreement and, in reliance on the conceptual plans for the Project shown on Exhibit B, and in

order to facilitate the Project, the Town Board and the DDA have determined that it is in the best interests of the Town and the DDA to enter into this Agreement; and

WHEREAS, in order to encourage the Project and to further the Plan of Development, the DDA has determined that the DDA shall enter into a Façade Easement Agreement with the Company whereby the DDA will agree to purchase easements from the Company over Eligible Facades in accordance with the terms and provisions set forth herein; and

WHEREAS, the DDA has determined that entering into the Façade Easement Agreement will provide significant economic benefits and is consistent with and in furtherance of the purposes of the DDA and the DDA Act; and

WHEREAS, pursuant to DDA Resolution _____, the DDA Board has authorized the DDA's execution of this Agreement; and

WHEREAS, the Town Board has further determined that entering into this Agreement with the Company will serve the important public purposes of restoring the Mill, maintaining and increasing employment in the Town, stabilizing and improving the long-term tax base of the Town, and providing additional economic health benefits to the Town; and

WHEREAS, the estimates of Project Property Tax Increment and Project Sales Tax Increment over a ten (10) year collection period are estimated to produce tax revenues of approximately One Million Five Hundred Eight Thousand Dollars (\$1,508,000) and One Million Two Hundred Twelve Thousand Dollars (\$1,212,000), respectively; and

WHEREAS, the incentives provided in this Agreement are based upon a cost analysis dated September 19, 2016 which is attached hereto as Exhibit C and incorporated herein by this reference as if set forth fully herein (the "Cost Analysis"); and

WHEREAS, pursuant to Town Board Resolution _____, the Town Board has authorized the Town's execution of this Agreement; and

WHEREAS, pursuant to a Company resolution, the Company has authorized its participation in this Agreement.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows.

SECTION 1. DEFINITIONS. For purposes of this Agreement, capitalized terms used herein and not otherwise defined herein shall have the meanings set forth below:

"Charter" means the Home Rule Charter of the Town.

"Construction Use Taxes" means the Construction Use Taxes received by the Town pursuant to Chapter 4, Article III of the *Windsor Municipal Code* from the LLC in connection with the Project.

“Cost Analysis” means that cost analysis prepared on September 19, 2016 by the Town using data provided by the Company upon which the financial incentives of this Agreement are based.

“County” means Weld County, Colorado.

“DDA” means the Windsor Downtown Development Authority, a duly organized and existing downtown development authority under the Constitution and laws of the State of Colorado, including, particularly, Title 31, Article 25, Part 8, Colorado Revised Statutes, as amended.

“DDA Act” means Title 31, Article 25, Part 8, Colorado Revised Statutes, as amended.

“DDA Board” means the Board of Directors of the DDA.

“DDA District” means the area described in the Plan of Development and approved by Resolution No. 2011-26, and as may hereafter be amended by valid legislative action of the Town.

“DDA Reserve Fund Balance” means that fund balance maintained by the DDA pursuant to Articles 1.2 (d) and (g) of the Amended and Restated Intergovernmental Agreement Between the Town of Windsor, Colorado, and the Windsor Downtown Development Authority Regarding Continuing Town Support of the Windsor Downtown Development Authority dated March 14, 2016, whereby at the beginning of each fiscal year, any unexpended DDA revenue from Town sales tax transfers is reserved for one or more capital projects.

“Development Fees” means the customary development review fees and customary administrative review fees assessed and received by the Town and disbursed to the Windsor-Severance Fire Rescue District pursuant to that certain Intergovernmental Agreement for Collection and Disbursement of Fee Revenue dated July 17, 2012, between the Town and the Windsor-Severance Fire Rescue District.

“Eligible Costs” means the reasonable and necessary expenditures to construct the Eligible Façade Improvements as certified by the Company and verified by the DDA.

“Eligible Façade Improvements” means improvements to the Eligible Facades, including fascia, soffits, exterior walls, signage, doors, windows, canopies and structural support materials therefor, which are depicted on exhibit(s) to the Façade Easement Agreement.

“Eligible Facades” means the north, east and south facades of the renovated Mill building within the Project and any other facades of the Project which the DDA Board deems eligible.

“Façade Easement Agreement” means the executed agreement between the DDA and the Company relating to the Façade Easements dated _____ and approved by Resolution of the DDA Board.

“Façade Easements” means those easements over the Eligible Facades of the Project purchased by the DDA from the Company in accordance with the terms and conditions of this Agreement and the Façade Easement Agreement.

“Plan of Development” means the Plan of Development for the DDA, as amended from time to time, approved by the DDA Board and the Town Board in accordance with the DDA Act.

“Project” generally means the acquisition, construction and installation of a brewpub, cocktail bar and dining facility open to the public, and office space available for rental occupancy on the Property, as more specifically depicted on Exhibit B attached hereto and incorporated herein by this reference as if set forth fully.

“Project Improvement Fee” means an owner-imposed requirement that a fee equal to one percent (1%) of all retail sales activity taking place within the Property shall be paid to the Company, which fee shall be collected and retained by the Company to offset the Company’s costs of development of the Property. The Project Improvement Fee shall run with the land, shall not be deemed a tax, and shall be administered by the Company as a private matter between the Company and any retailer doing business on the Property.

“Project Property Tax Increment Revenues” means all revenues derived in each fiscal year from the levy of *ad valorem* taxes at the rate fixed each year by or for each public body having taxing power over the Property upon that portion of the valuation for assessment of the Property within the boundaries of such public body that is in excess of the valuation for assessment on the date that the Property was added to the District by valid legislative action of the Town, all in accordance with Section 31-25-807(3) of the DDA Act, less any collection fees lawfully payable to the Town or the County, for services rendered in connection with the collection of such *ad valorem* taxes.

“Project Sales Tax Increment Revenues” means all revenue derived from the Town’s sales tax rate as applied to retail activity within the Property, less any portion previously set aside for construction and expansion of the Windsor Community Recreation Center under *Windsor Municipal Code* Section 4-2-20 (2) and 4-2-20 (9).

“Property” means the real property described in Exhibit A attached hereto and incorporated herein by this reference as if set forth fully.

“Property Tax Increment Period” means the period of time during which the Town is authorized under State law to receive Project Property Tax Increment Revenues pursuant to the DDA Act. As of the date of this Agreement, the Property Tax Increment Period terminates on June 27, 2041.

“Public Capital Improvements” means those public capital improvements intended for dedication to the Town and required by Town regulations in order for the Project to receive a certificate of occupancy.

“Tax Increment Reimbursement Amount” means the total sum of One Million Three Hundred Sixty Thousand Dollars (\$1,360,000), which amount is a combination of payments by the DDA and the Town to the Company from Project Property Tax Increment Revenues and Project Sales Tax Increment Revenues.

“Town” means the Town of Windsor, Colorado.

“Town Board” means the Town Board of the Town.

SECTION 2. REPRESENTATIONS AND COVENANTS

2.1. The Town represents and covenants that:

2.1.1. The Town is a home rule municipal corporation of the State of Colorado.

2.1.2. There is no litigation or administrative proceeding pending or, to the knowledge of the Town, threatened in writing, seeking to question the authority of the Town to enter into or perform this Agreement.

2.1.3. The Town has the authority to enter into this Agreement, and the Town Board has duly and regularly authorized the Town Manager to execute and deliver this Agreement. This Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms, except to the extent limited by Articles X and XI of the Colorado Constitution, bankruptcy, insolvency and other laws of general application affecting creditors’ rights and by equitable principles, whether considered at law or in equity.

2.2. The DDA represents and covenants that:

2.2.1. The DDA is a duly organized and existing downtown development authority under the Constitution and laws of the State of Colorado, including, particularly, the DDA Act.

2.2.2. There is no litigation or administrative proceeding pending or, to the knowledge of the DDA, threatened in writing, seeking to question the authority of the DDA to enter into or perform this Agreement or the Façade Easement Agreement.

2.2.3. The DDA has the authority to enter into this Agreement, and the DDA Board has properly and regularly authorized the DDA to enter into this Agreement. This Agreement constitutes a valid and binding obligation of the DDA, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors’ rights and by equitable principles, whether considered at law or in equity.

2.3. The Company represents and covenants that:

2.3.1. The Company is a limited liability company, duly organized and validly existing under the laws of the State of Colorado, is in good standing, is not in violation of any provisions of its organizational documents or, to its knowledge, the laws of the State of Colorado.

2.3.2. The Company has the power and legal right to enter into the Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action, which Agreement shall be enforceable against the Company in accordance with its terms, except to the extent limited by bankruptcy, insolvency

and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

- 2.3.3. The consummation of the transactions contemplated by this Agreement shall not violate any provision of the governing documents of the Company or, to its knowledge, constitute a default or result in the breach of any term or provision of any contract or agreement to which the Company is a party or by which it is bound.
- 2.3.4. To its knowledge, there is no litigation, proceeding, or investigation contesting the power of authority of the Company with respect to the Project or this Agreement or any other agreements contemplated herein, and the Company is unaware of that any such litigation, proceeding, or investigation has been threatened.
- 2.3.5. The Company reasonably believes the Project as described and depicted on Exhibit B is a reasonably reliable representation of the Project. The Company shall develop the Property with appropriate care and diligence and cause the Project to be constructed in a manner generally consistent with Exhibit B.
- 2.3.6. In developing the Property, the Company shall comply with all applicable zoning and land use requirements and other applicable federal, state, county, and Town statutes, rules, regulations and ordinances. The Company agrees to comply with all Town codes, ordinances, resolutions and regulations and, with the exception of those taxes, fees and expenses waived by this Agreement, to pay all taxes, fees and expenses due to the Town under the *Windsor Municipal Code* or this Agreement, subject to any variances or modifications of standards that may be granted to the Company under the Town Code or the *Windsor Municipal Code*, and to comply with the terms and conditions of the development agreement executed between the Company and the Town in connection with the Project.
- 2.3.7. The Company shall cooperate with the Town and the DDA in taking reasonable actions to defend against any litigation brought by a third party concerning the Project or this Agreement or any other agreements contemplated herein.
- 2.3.8. The Company shall have no right to seek a reduction in the Project's property tax assessed valuation or to seek an abatement of property taxes, and the Company covenants that it will not seek such a reduction or abatement, until the Town and the DDA have fully paid the Tax Increment Reimbursement Amount required pursuant to this Agreement. In the event that the Company seeks, and successfully obtains, a reduction or abatement in the Property's property tax assessed valuation that results in the DDA's Project Property Tax Increment Revenues being less than the Tax Increment Reimbursement Amount, the Tax Increment Reimbursement Amount shall be reduced in an amount equal to the reduction in the Project Property Tax Increment Revenues. The Company shall provide written notice to the Town and to the DDA of any requested reduction in the Property's property tax assessed valuation or abatement of the Property's property taxes. A memorandum of this covenant shall be recorded with the County Clerk and Recorder's Office.

2.3.9. The Company acknowledges that the Town and the DDA have not made, and do not make, any representations to the Company or its representatives as to the tax consequences of any of the payments, contributions and/or reimbursements provided for in this Agreement. Under no circumstances will the Town or the DDA pay or reimburse any income tax liability, penalty or interest assessed against the Company.

SECTION 3. PROJECT IMPROVEMENT FEE

3.1 Covenant for Project Improvement Fee. Immediately following acquisition of fee title to the Property, the Company shall record a covenant under which the Project Improvement Fee will be implemented, collected and retained by the Company. A copy of the recorded Project Improvement Fee covenant shall be presented to the Town and the DDA within a reasonable time following recording. [Is this a “shall” or a “may”?]

SECTION 4. AGREEMENT CONTINGENCIES

This Agreement is contingent upon the following:

4.1 Evidence of Purchase. On or prior to March 1, 2017, or such later date as may be agreed upon between the Company and the DDA and the Town, the Company shall acquire fee simple title to the Property and shall submit written evidence of such purchase to the Town and the DDA. Nothing herein shall be construed to require the Company to acquire the Property as the site for the Project, nor to undertake the Project (“Purchase Contingency”).

4.2 Receipt of Certificate of Occupancy and Executed Leases. Satisfaction no later than December 31, 2018 by the Company of the following: (i) receipt by the Company of a temporary or permanent certificate of occupancy from the Town for the Project; and (ii) evidence submitted to the Town by the Company that leases, each for an initial term of five (5) years, have been executed for at least fifty percent (50%) of the gross leasable space within the Project for uses generally consistent with the Project plans depicted on Exhibit B and approved in final form by the Town, which approval shall not be unreasonably withheld (“Project Completion and Lease Contingencies”).

4.3 Agreement Termination. In the event that the Company does not satisfy either the Purchase Contingency or the Project Completion and Lease Contingencies within the respective timeframes described in this Section 4, this Agreement shall thereupon automatically terminate and be null and void and all obligations of the DDA and the Town shall thereupon cease.

SECTION 5. CONTRIBUTIONS FOR PUBLIC CAPITAL IMPROVEMENTS, PURCHASE OF FAÇADE EASEMENTS AND PROJECT CONSTRUCTION COSTS

5.1 Initial Funding of Project by Company. Subject to payment, reimbursement and contribution from the Town and the DDA as set forth herein, the Company shall bear all expense for the design, acquisition, construction and installation of the Project, which is estimated to be approximately Ten Million Dollars (\$10,000,000).

5.2 Total DDA Contribution. The DDA shall contribute a total of Two Million Three Hundred Forty Thousand Dollars (\$2,340,000) to the Company (“Total Contribution”) for (i) the purchase of Façade Easements pursuant to the terms of the Façade Easement Agreement (“Down Payment”); and (ii) the payment of Public Capital Improvements, in accordance with the following provisions:

5.2.1 Escrow Agreement. The Company shall prepare and execute an escrow agreement in a form satisfactory to the DDA and the Town (“Escrow Agreement”), and establish and fully fund an escrow account (“Escrow Account”), all in accordance with the following terms and conditions:

(a) Cash in the amount of the Total Contribution shall be placed by the Company in an escrow account to be used in accordance with the Escrow Agreement.

(b) In the event that the Company does not satisfy either the Purchase Contingency or the Project Completion and Lease Contingencies within the respective time frames described in Section 4 above, then in that event, the amount of Five Hundred Thousand Dollars (\$500,000) in the Escrow Account shall be paid to the DDA and the amount of One Million Eight Hundred Forty Thousand Dollars (\$1,840,000) shall be paid to the Town.

5.2.2 Conditions Precedent to Payment. Prior to payment by the DDA and/or the Town to the Company of any portion of the Total Contribution, the following conditions shall be met by the Company (“Conditions Precedent”):

(a) Evidence submitted to the DDA and the Town by the Company of an executed construction contract (“Construction Contract”) for the Project with a construction firm which, after seeking at least three bids therefor, is the lowest responsible bidder (“Construction Company”);

(b) Receipt of a building permit from the Town for the Project;

(c) Review and approval by the Town and the DDA of the specific Public Capital Improvements and the Eligible Façade Improvements to be funded pursuant to this Agreement, the costs of which shall be separately delineated in the Construction Contract;

(d) Preparation and establishment by the Company of the Escrow Agreement and full funding of an Escrow Account in accordance with the Escrow Agreement; and

(e) Execution of the Façade Easement Agreement by the DDA and the Company.

In the event that the Conditions Precedent to the Total Contribution have not been satisfied, the Town and the DDA shall be permanently and irrevocably released from their obligations under this Section 5.

5.2.3 Periodic Payments. Payments will be made by the DDA to the Company or its designee as defined in Subsection 5.2.4 below within a reasonable period of time following

receipt of a contractor invoice, with accompanying documentation, showing the Public Capital Improvements and the Eligible Façade Improvements which have been completed during the invoice period, and their respective costs, all as more fully set forth in the Façade Easement Agreement. Each such contractor invoice shall be approved by the Company prior to being sent to the DDA for payment.

5.2.4 Company Designee. The Company may identify one or more persons to receive payments required under this Agreement (“Designee”) by notifying the Town and the DDA in writing no less than thirty (30) days before such Designee will be recognized as eligible for receipt of funds by the Town and the DDA. When notifying the Town and DDA of a Designee, the Company will provide the Designee name, address, contact information, and clear authority for the payment of funds to the Designee. Upon identification of a Designee or Designees by the Company, the Company will be deemed to have authorized the Town and the DDA to pay the Designee any sums owed to the Company by the Town or the DDA, except as may be limited or conditioned by the Company when identifying a Designee. The Company may rescind a Designee, and will do so in writing no less than thirty (30) days prior to the rescission taking effect.

5.3 Balance Remaining. In the event that there is a balance remaining after the payments contemplated in Subsection 5.2 above, the DDA shall return any such balance to the Town and the Town shall pay the same to the Company or its designee to be used for acquisition costs of the Property or construction costs of the Project building.

5.4 Reimbursement From Third Parties. After the date of this Agreement, to the extent that the Company receives grants, contributions or reimbursements from anyone other than the Town or the DDA to offset or reimburse the Company for the Project, all such grants, contribution(s) or reimbursement(s) shall directly offset and reduce the Total Contribution.

SECTION 6. PAYMENT OF TAX INCREMENT REIMBURSEMENT AMOUNT

6.1 The Town and the DDA shall reimburse the Company the Tax Increment Reimbursement Amount at such times and for such purposes as described below in this Section 6.

6.2 Project Sales Tax Increment Reimbursement. The Town shall annually reimburse to the Company an amount equal to fifty percent (50%) of the Project Sales Tax Increment Revenues collected by the Town until the Tax Increment Reimbursement Amount is paid in full from a combination of Project Sales Tax Increment Revenues paid by the Town to the Company and Project Property Tax Increment Revenues paid by the DDA to the Company pursuant to the Façade Easement Agreement. Such reimbursement shall be used solely to defray land acquisition and building construction costs of the Project. The remaining fifty percent (50%) of the Project Sales Tax Increment Revenues shall be retained by the Town.

6.2.1 Annual Payments. The Town’s payments toward the Tax Increment Reimbursement Amount shall be tendered once annually to the Company by no later than January 15 of each calendar year following issuance of the certificate of occupancy for the Project. Each such payment shall capture fifty percent (50%) of Project Sales Tax

Increment Revenues received by the Town prior to December 31 of the previous calendar year.

6.2.2 Continuing Payments. The Town's annual payments against the balance of the Tax Increment Reimbursement Amount shall continue until it is paid in full, at which time the Town shall be under no further obligation to reimburse the Company from any Project Sales Tax Increment Revenues or Project Property Tax Increment Revenues.

6.2.3 Prepayment. With the consent of the DDA, the Town may prepay in whole or in part any of the balance remaining on the Tax Increment Reimbursement Amount at any time without penalty.

6.2.4 No Interest. The Tax Increment Reimbursement Amount shall not bear interest.

6.2.5 The Town's reimbursement obligation payable from Project Sales Tax Increment Revenues shall be contingent upon the Company having met the Conditions Precedent described in Subsection 5.2.2 of this Agreement.

6.3 DDA Project Property Tax Increment Reimbursement.

6.3.1 Annual Reimbursements. Subject to the limitations of the Property Tax Increment Period and the reimbursement conditions and terms set forth in the Façade Easement Agreement, the DDA shall annually reimburse the Company an amount equal to fifty percent (50%) of the Project Property Tax Increment Revenues until the first to occur of the following two events: (i) the date that the Tax Increment Reimbursement Amount, less the amount of the Down Payment, is paid in full from a combination of Project Sales Tax Increment Revenues paid by the Town to the Company and Project Property Tax Increment Revenues paid by the DDA to the Company pursuant to this Agreement and the Façade Easement Agreement, or (ii) reimbursement of all Eligible Costs of all Eligible Façade Improvements ("Property Tax Increment Reimbursement Termination Date").

6.3.2 Façade Easement Agreement Controls. The specific terms of repayment shall be controlled by the terms of the Façade Easement Agreement. In the event of a conflict between the terms of this Agreement and the Façade Easement Agreement, the Façade Easement Agreement shall control.

6.3.3 Annual Payments. Commencing in 2018 (or 2019 if the Project is not completed in 2017), the DDA's payments toward the Tax Increment Reimbursement Amount shall be tendered once annually to the Company on December 1st of each calendar year. Each such payment shall capture fifty percent (50%) of Project Property Tax Increment Revenues received by the Town on behalf of the DDA prior to December 31st of the previous calendar year.

6.3.4 Continuing Payments. The DDA's annual payments against the balance of the Tax Increment Reimbursement Amount shall continue until the earlier to occur of the Property Tax Increment Reimbursement Termination Date or the expiration of the Property Tax

Increment Period, at which time the DDA's payment obligations shall cease and the DDA shall be under no further obligation to reimburse the Company.

6.3.5 Prepayment. With the consent of the Town, the DDA may prepay in whole or in part any of the balance remaining on the Tax Increment Reimbursement Amount at any time without penalty.

6.3.6 No Interest. The Tax Increment Reimbursement Amount shall not bear interest.

6.4 Reimbursement Amount Maximum. In no event shall the Company receive, or be entitled to receive, more than the Tax Increment Reimbursement Amount from the combined payments of the Town and the DDA from Project Sales Tax Increment Revenues and Project Property Tax Increment Revenues.

SECTION 7. WAIVER OF CONSTRUCTION USE TAX, CAPITAL IMPROVEMENT FEES, IMPACT FEES; EXCEPTIONS

7.1 General Waiver. The Town shall waive the payment of all Construction Use Tax, impact fees, plant investment fees, building fees, electrical fees, plan review fees, administrative fees, initial raw water dedications, and storm water drainage fees which would customarily be collected by the Town in connection with initial building permit approval for the Project.

7.2 Required Payment of Development Fee. Notwithstanding the foregoing General Waiver of Town fees, the Company shall pay the Development Fees to the Town for disbursement to the Windsor-Severance Fire Rescue District in accordance with established customs.

SECTION 8. RECORDS AND AUDITS

8.1 The Town shall keep, or cause to be kept, true, accurate and complete records of all calculations relating to the collection and reimbursement of sales tax generated by taxable retail activity on the Property, and such other calculations, allocations and payments of the Tax Increment Reimbursement Amount required by this Agreement. The Town's obligation to keep records in accordance with this sub-paragraph shall terminate two years after payment in full of the Tax Increment Reimbursement Amount. The Town shall make such records available for inspection by the Authority upon ten (10) days' notice at all reasonable times, to the extent permitted by law.

8.2 The DDA shall keep, or cause to be kept, true, accurate and complete records of all calculations relating to the collection and reimbursement of *ad valorem* property tax generated by the assessed valuation of the Property, and such other calculations, allocations and payments of the Tax Increment Reimbursement Amount required by this Agreement. The DDA's obligation to keep records in accordance with this sub-paragraph shall terminate two years after payment in full of the Tax Increment Reimbursement Amount. The DDA shall make such records available for inspection by the Town upon ten (10) days' notice at all reasonable times, to the extent permitted by law.

8.3 Except in accordance with judicial order, consent of the retailer or as otherwise provided by law, neither the Town nor the DDA shall not divulge or make known in any way financial information disclosed in any document, report or return filed in connection with sales tax reporting by retailers doing business on the Property. Town and DDA officials charged with the custody of such documents, reports and returns shall not disclosure or produce them or evidence of anything contained in them in any action or proceeding in any court, except that a court of competent may require the production of, and may admit into evidence, so much of said documents, reports and returns, or of the facts shown thereby, as are ruled relevant to the action or proceeding.

SECTION 9. ASSIGNMENT

9.1 The Company shall not assign all or any part of this Agreement, except:

- (a) With the prior written consent of the Town Board and the Board, which consent shall not be unreasonably withheld or conditioned; or
- (b) As collateral to a lender in connection with the financing of the Project; or
- (c) To a successor by merger, consolidation or by acquisition of all or a substantial portion of the shares or assets of the Company; or
- (d) In conjunction with a voluntary or involuntary bankruptcy filing by the Company.

SECTION 10. EVENTS OF DEFAULT; REMEDIES

10.1 Default or an event of default by the Company shall mean one or more of the following events:

- (a) Determination that any representation or warranty made in this Agreement by the Company was materially inaccurate when made or shall prove to be materially inaccurate;
- (b) The assignment of, or an attempt to assign, this Agreement by the Company in violation of Section 8 of this Agreement; or
- (c) The failure by the Company to substantially observe or perform any other material covenant, obligation or commitment required under this Agreement.

10.2 In order to exercise any remedy for default hereunder, upon the occurrence of any event of default, the Town or the DDA shall provide written notice to the Company. The Company must immediately proceed to cure or remedy such default, and in any event, such default shall be cured within thirty (30) days after receipt of the notice, or such longer time as the Town, the DDA and the Company agree in writing. Upon the failure of the Company to so cure any such default, the Town and the DDA shall have all remedies available to it, in law or in equity, excluding specific performance.

10.3 Default or an event of default by the Town shall mean one or more of the following events:

(a) A determination that any representation or warranty made in this Agreement by the Town was materially inaccurate when made or shall prove to be materially inaccurate; or

(b) The failure by the Town to perform any nonmonetary, material covenant, obligation or agreement required of it under this Agreement.

10.4 In order to exercise any remedy for default hereunder, upon the occurrence of any event of default, the Company shall provide written notice to the Town. The Town must immediately proceed to cure or remedy such default, and in any event, such default shall be cured within thirty (30) days after receipt of the notice, or such longer time as the Town and the Company agree in writing. Upon the failure of the Town to so cure any such default, the Company shall have resort to specific performance as its sole and exclusive remedy.

10.5 Default or an event of default by the DDA shall mean one or more of the following events:

(a) A determination that any representation or warranty made in this Agreement by the DDA was materially inaccurate when made or shall prove to be materially inaccurate; or

(b) The failure by the DDA to perform any nonmonetary, material covenant, obligation or agreement required of it under this Agreement.

10.6 In order to exercise any remedy for default hereunder, upon the occurrence of any event of default, the Company shall provide written notice to the DDA. The DDA must immediately proceed to cure or remedy such default, and in any event, such default shall be cured within thirty (30) days after receipt of the notice, or such longer time as the DDA and the Company agree in writing. Upon the failure of the DDA to so cure any such default, the Company shall have resort to specific performance as its sole and exclusive remedy.

10.7 Notwithstanding the foregoing or any provision to the contrary contained herein, any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God; fires; floods; earthquake; strikes; labor disputes; terrorism; regulation or order of civil or military authorities; or other causes, similar or dissimilar, which are beyond the control of such party.

SECTION 11. NOTICES

11.1 All notices required or permitted hereunder shall be in writing and shall be effective upon mailing, deposited in the United States Mail, postage prepaid, and addressed to the intended recipient as follows. Any party can change its address by written notice to the other given in accordance with this Section. Any party can change the method by which it can receive notice hereunder by written notice to the other parties hereunder.

Town of Windsor: Town of Windsor

Attention: Town Manager
301 Walnut Street
Windsor, CO 80550

With a copy to: Town of Windsor
Attention: Town Attorney
301 Walnut Street
Windsor, CO 80550

DDA: Windsor Downtown Development Authority
Attention: Executive Director
301 Walnut Street
Windsor, CO 80550

With a copy to: Liley Law Offices, LLC
Attention: Lucia A. Liley
419 Canyon Avenue, Suite 220
Fort Collins, CO 80521

Company: Old Windsor Mill, LLC
Attention: Steve Schroyer
401 West Mountain Avenue
Fort Collins, Colorado 80521

With a copy to: **Company attorney?.**
Attention: General Counsel???

With a copy to: **[anyone else?]**

SECTION 12. MISCELLANEOUS

12.1 321 Main Street. Redevelopment of 321 Main Street is not included in the Project, nor is it contemplated herein. The Authority and the Town agree to consider, in good faith, any future proposals in connection with development of 321 Main Street, including economic development inducements and incentives in accordance with the then-existing regulations and policies of the Town and the DDA for such inducements and incentives. Such consideration may include, but is not necessarily limited to, purchase of façade easements, waivers or reimbursements of Town fees, tax increment financing and the other measures customarily made available for economic development in the Town of Windsor.

12.2 Legal Availability of Funds. The Town's and the DDA's obligations herein shall be subject to the Constitution and laws of the State of Colorado and the Charter, including but not limited to, applicable prohibitions on multiple fiscal year obligations and the condition that all Town and DDA obligations are contingent upon the appropriation of funds by the Town Board and the DDA

Board. The Town's and the DDA's obligations under this Agreement shall be deemed from year to year only and do not constitute mandatory payment obligations in any future fiscal year. This Agreement does not directly or indirectly obligate the Town or the DDA to make any payment beyond those for which funds have been appropriated as of the date of this Agreement. The Town Manager shall make a good faith effort to include in the budget recommendations and appropriation resolutions proposed to the Town Board, in each year prior to expiration of this Agreement, amounts sufficient to meet the Town's and the DDA's commitments hereunder, subject to the conditions and contingencies set forth herein. Notwithstanding the foregoing, the parties expressly acknowledge that the decision as to whether to appropriate such amounts is in the discretion of the Town Board and the DDA Board.

12.3 Binding Effect. This Agreement inures to the benefit of and is binding upon the Town, the DDA and the Company and the Company's assignees which are permitted pursuant to Section 8 of this Agreement.

12.4 No Third Party Beneficiaries. The Town and the DDA are not obligated or liable under the terms of this Agreement to any person or entity not a party hereto except any assignee permitted pursuant to Section 8 of this Agreement. Further, the Town and the DDA are not bound by any contracts or conditions that the Company may negotiate with third parties related to the Project.

12.5 Interpretation, Jurisdiction and Venue. This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado govern the validity, construction, enforcement and interpretation of this Agreement. Exclusive jurisdiction and venue for resolution of any dispute arising hereunder shall be in the Weld County, Colorado District Court.

12.6 Amendment. This Agreement may be amended only by a written instrument signed by the parties to this Agreement.

12.7 Additional Documents or Action. The parties to this Agreement agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement or is reasonably requested by another party to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof. If all or any portion of this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the parties to this Agreement, within the scope of their powers and duties, shall cooperate in the joint defense of such documents and, if such defense is unsuccessful, such parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each party substantially receives the benefits that it would have received under this Agreement.

12.8 Good Faith of Parties. In the performance of this Agreement or in considering any requested approval, consent, acceptance, or extension of time, the parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

12.9 Waiver of Breach. Any waiver of any requirement or obligation hereunder must be in writing to be effective. Any waiver by any party to this Agreement of any term or provision of this Agreement shall be narrowly construed, and shall not operate or be construed as a subsequent or continuing waiver of said term or provision.

12.10 Article and Section Captions. The captions of the articles and sections of this Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

12.11 Town, DDA and Company Not Partners. Notwithstanding any language in this Agreement, neither the Town nor the DDA is a member, partner, or joint venturer of the Company, and neither the Town nor the DDA shall be responsible for any debt or liability of the Company or its contractors or agents. The Company is not responsible for any debt or liability of the Town, the DDA, or their respective contractors or agents.

12.12 Severability. If any portion or portions of this Agreement are determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect as if such illegal or unenforceable portion or portions did not exist. If all or any portion of the payments required by the terms of this Agreement are determined, by a court of competent jurisdiction in a final non-appealable judgment, to be contrary to public policy or otherwise precluded, and if the decision of such court clearly indicates how the payments may be made differently and in a manner that is legal, valid and enforceable, then the Parties shall utilize their reasonable, best, good faith efforts to promptly restructure and/or amend this Agreement in accordance with such court decision, or to enter into a new agreement, to assure, to the extent legally permissible, that all payments are made to the Company as contemplated by this Agreement.

12.13 Originals. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Agreement.

12.14 Joint Draft. The parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content.

IN WITNESS WHEREOF, the Town, the DDA and the Company have executed this Agreement as of the date first above written.

[Remainder of this intentionally left blank - - signatures to follow]

WINDSOR DOWNTOWN DEVELOPMENT
AUTHORITY, a body corporate and politic

By: _____
Robert Winter, Chair

Attest:

Craig Peterson, Secretary

[Seal]

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing Agreement was executed before me this _____ day of _____,
2016, by Robert Winter, as Chair, and by Craig Peterson, as Secretary, of THE WINDSOR
DOWNTOWN DEVELOPMENT AUTHORITY.

WITNESS my hand and official seal.

My commission expires:

Notary Public

List of Exhibits

- Exhibit A Legal Description of the Property
- Exhibit B Conceptual Development Proposal for the Project
- Exhibit C Cost Analysis

Exhibit A

Legal Description of the Property

Parcel I:

Lots 2, 4, 6, 8, 10, 12, 14 and 16, Block 11, Town of Windsor, County of Weld, State of Colorado.

Parcel II:

A part of the Burlington and Northern Railroad Company's Greeley Branch Former Right of way lying in Section 21, Township 6 North, Range 67 West of the 6th P.M. , County of Weld, State of Colorado, being more particularly described as follows: Beginning at the intersection of the North line of Block 11, Town of Windsor with the Southerly line of said railroad right of way; thence South 88 degrees 30 minutes 20 seconds East along said North line of Block 11 produced Easterly a distance of 126.76 feet to the intersection of the East line of said Block 11 produced Northerly; thence South 01 degrees 27 minutes 27 seconds West along said East line of Block 11 produced Northerly, a distance of 40.00 feet to the Northeast corner of said Block 11 and said Southerly railroad right of way line; thence along said Southerly railroad right of way line, the following 2 courses: 1. North 71 degrees 00 minutes 09 seconds West a distance of 114.62 feet to a point of curvature; 2. Along said curve to the right having a radius of 11, 609.16 feet, a central angle of 00 degrees 05 minutes 25 seconds and an arc length of 18.32 feet to the point of beginning, County of Weld, State of Colorado. Said parcel also known as Lot 20, Burlington Subdivision, Town of Windsor, County of Weld, State of Colorado.

Exhibit B

Conceptual Development Proposal for the Project

Exhibit C
Cost Analysis

WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY

RESOLUTION # _____

A RESOLUTION APPROVING AN AGREEMENT FOR ECONOMIC INCENTIVES AND INDUCEMENTS BETWEEN AND AMONG THE WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY, THE TOWN OF WINDSOR, COLORADO, AND OLD WINDSOR MILL, LLC, WITH RESPECT TO THE REDEVELOPMENT OF THE WINDSOR MILL AND ELEVATOR PROPERTY

WHEREAS, the Town of Windsor ("Town") is a Colorado home rule municipality with all powers and authority provided by Colorado law;

WHEREAS, by Ordinance No. 2011-1401, the Town created and established the Windsor, Colorado, Downtown Development Authority ("DDA") with all the purposes and powers now or hereafter authorized by Part 8 of Colorado Revised Statutes Title 31, Article 25 (the "DDA Statute"), and all additional and supplemental powers necessary or convenient to carry out and effectuate the purposes and provisions of said Part 8 within the boundaries of the DDA as such boundaries presently exist and may in the future be expanded, and has approved the DDA's Plan of Development;

WHEREAS, the DDA Statute has declared that the organization of downtown development authorities serves a public use; promotes the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; halts or prevents deterioration of property values or structures within central business districts; halts or prevents the growth of blighted areas within such districts, and assists municipalities in the development and redevelopment of downtowns and in the overall planning to restore or provide for the continuance of the health thereof;

WHEREAS, the Windsor Mill and Elevator, located at the southeast corner of 3rd Street and Main Street (Colorado Highway 392), was built in 1899 and used as a flour and feed mill until 1990; it stands as a landmark structure in the downtown and shapes a lasting impression of Windsor to both residents and visitors (the "Mill Property");

WHEREAS, the Mill Property was significantly damaged by a tornado in 2008, with the resulting damage and associated costs of repair greatly hindering restoration efforts;

WHEREAS, in 2014, a Feasibility Study was completed by the DDA with assistance from the Colorado Department of Local Affairs to explore the viability of reusing the structure with recommendations presented that indicated the Mill could be restored for an estimated \$9.2 million, and that "identifying funding is the biggest challenge facing the redevelopment effort," indicating that the best options would include private investment "and public funding as needed to bridge gaps;"

WHEREAS, the DDA has prioritized revitalization of the Mill Property as one of four key initiatives of its 2016 Strategic Plan, noting that "The DDA Board is ready to enthusiastically support partnering with the Town and the Mill Owners to motivate action in redeveloping this landmark into an iconic gateway to downtown;"

WHEREAS, the citizens of Windsor have consistently urged that the Town make revitalization of the Mill Property a top priority;

WHEREAS, Old Windsor Mill, LLC, a Colorado limited liability company (the "Company") has proposed to purchase and make significant improvements to the Mill generally anticipating the following combination of uses: a brewpub, cocktail bar and dining facility open to the public, and office space available for rental occupancy ("Project");

WHEREAS, the significant cost premium for rehabilitating an existing historic structure versus new construction inherently creates a lease premium that would result in exorbitant lease rates nearly double that of existing downtown rates, demonstrating the magnitude of the funding gap needed to be bridged to bring restoration of the Mill to fruition;

WHEREAS, the Company has requested financial assistance from the DDA and the Town in order to make redevelopment of the Mill Property feasible;

WHEREAS, the Town and the DDA consider revitalization of the Mill Property to be a catalyst project which will create increased interest and investment in surrounding properties in the downtown and provide overall economic benefit to the Town and DDA;

WHEREAS, according to the Town's independent fiscal analysis, the Project will bring increased retail sales tax and ad valorem property tax revenue to the Town and the DDA and enabling the expansion of the DDA's programs and initiatives to create a prosperous downtown;

WHEREAS, the Project is a valuable undertaking that furthers the objectives set forth in the Town's 2016 Comprehensive Plan, and its 2010 Downtown Design Guidelines and Financing Plans, as well as the DDA's 2016 Strategic Plan and its Plan of Development;

WHEREAS, the Company has requested that the DDA and the Town enter into the attached Agreement for Economic Incentives and Inducements ("Agreement"), incorporated herein by this reference as if set forth fully and, in reliance on the conceptual plans for the Project presented by the Company, and in order to facilitate the Project, the DDA has determined that it is in the best interests of the DDA to enter into the Agreement;

WHEREAS, the DDA has determined that entering into the Agreement with the Town and the Company will serve the important public purposes of restoring the Mill, maintaining and

increasing employment in the Town, stabilizing and improving the long-term tax base of the Town, and providing additional economic health benefits to the Town;

WHEREAS, the DDA has further determined that entering into the Agreement is consistent with and in furtherance of the purposes of the DDA and is consistent with the Downtown Development Authority Act; and

WHEREAS, by this Resolution, the DDA intends to authorize the execution of this Agreement, contingent upon its execution by both the Town and the Company.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY AS FOLLOWS:

1. The attached Agreement for Certain Economic Incentives and Inducements between and among the DDA, the Town and the Company is approved.
2. The Chairman of the DDA is authorized to execute said agreement on the DDA's behalf.
3. DDA legal counsel and the DDA executive director are authorized to approve changes to said agreement relating to increasing legal protections and benefits for the DDA, as well as grammatical and other minor changes of a non-substantive nature.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 29th day of November, 2016.

WINDSOR, COLORADO, DOWNTOWN
DEVELOPMENT AUTHORITY

By: _____
Bob Winter, Chairman

ATTEST:

Craig Peterson, Secretary

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF WINDSOR
AND THE WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY
MODIFYING THE MARCH 14, 2016 INTERGOVERNMENTAL AGREEMENT
REGARDING FUNDING FOR REDEVELOPMENT OF THE WINDSOR MILL AND
ELEVATOR PROPERTY**

This INTERGOVERNMENTAL AGREEMENT (“IGA”) is executed this _____ day of _____, 2016, by and between the TOWN OF WINDSOR, a Colorado home rule municipal corporation (“Town”), and the WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic (“DDA”).

RECITALS:

WHEREAS, by Ordinance No. 2011-1401, the Town created and established the DDA with all the purposes and powers now or hereafter authorized by Part 8 of Colorado Revised Statutes Title 31, Article 25 (the “DDA Statute”), and all additional and supplemental powers necessary or convenient to carry out and effectuate the purposes and provisions of said Part 8 within the boundaries of the DDA as such boundaries presently exist and may in the future be expanded (“DDA Boundaries”); and

WHEREAS, the DDA Statute has declared that the organization of downtown development authorities serves a public use; promotes the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; halts or prevents deterioration of property values or structures within central business districts; halts or prevents the growth of blighted areas within such districts, and assists municipalities in the development and redevelopment of downtowns and in the overall planning to restore or provide for the continuance of the health thereof; and

WHEREAS, the Windsor Mill and Elevator, located at the southeast corner of 3rd Street and Main Street (Colorado Highway 392), was built in 1899 and used as a flour and feed mill until 1990; it stands as a landmark structure in the downtown and shapes a lasting impression of Windsor to both residents and visitors (the "Mill Property"); and

WHEREAS, the Mill Property was significantly damaged by a tornado in 2008, with the resulting damage and associated costs of repair greatly hindering restoration efforts; and

WHEREAS, the deteriorating state of the Mill Property has been the subject of ongoing community discussion, including mention as a critical action item in the Town's 2016-2018 Strategic Plan, with the stated initiative to "Partner with a developer to renovate and establish a commercially viable entity at The Mill;" and

WHEREAS, the DDA has also prioritized revitalization of the Mill Property as one of four key initiatives of its 2016 Strategic Plan, noting that "The DDA Board is ready to enthusiastically support partnering with the Town and the Mill Owners to motivate action in redeveloping this landmark into an iconic gateway to downtown;" and

WHEREAS, in 2014, a Feasibility Study was completed by the DDA with assistance from the Colorado Department of Local Affairs to explore the viability of reusing the structure with recommendations presented that indicated the Mill could be restored for an estimated \$9.2 million, and that "identifying funding is the biggest challenge facing the redevelopment effort," indicating that the best options would include private investment "and public funding as needed to bridge gaps;" and

WHEREAS, Old Windsor Mill, LLC, a Colorado limited liability company (the "Company") has proposed to purchase and make significant improvements to the Mill and to that end has presented a conceptual development proposal for redevelopment of the Mill Property generally anticipating the following combination of uses: a brewpub, cocktail bar and dining facility open to the public, and office space available for rental occupancy ("Mill Project"); and

WHEREAS, the Company has requested financial assistance from the DDA and the Town in order to make redevelopment of the Mill Property feasible; and

WHEREAS, a secondary key initiative identified by the DDA's 2016 Strategic Plan is DDA Growth and Sustainability, with the express goal of supporting the renovation of existing buildings in an effort to grow the local tax base, which will enable the expansion of the DDA 's programs and initiatives which seek to create a prosperous downtown; and

WHEREAS, the significant cost premium for rehabilitating an existing historic structure versus new construction inherently creates a lease premium that would result in exorbitant lease rates nearly double that of existing downtown rates, demonstrating the magnitude of the funding gap needed to be bridged to bring restoration of the Mill to fruition; and

WHEREAS, the citizens of Windsor have consistently urged that the Town make revitalization of the Mill Property a top priority; and

WHEREAS, the Town and the DDA consider revitalization of the Mill Property to be a catalyst project which will create increased interest and investment in surrounding properties in the downtown and provide overall economic benefit to the Town and DDA; and

WHEREAS, the Town and the DDA desire to promote redevelopment of the Mill Property through various financial contributions, both short-term and long-term, which are expected to generate increased employment, increased tax revenue and increased visitor traffic to downtown Windsor; and

WHEREAS, on February 22, 2010, the Town Board adopted Resolution No. 2010-13, within which the Town Board approved and adopted the Town of Windsor Downtown Design Guidelines and Financing Plan ("Downtown Plan"); and

WHEREAS, on June 15, 2011, the Board of Directors of the DDA adopted the DDA Plan of Development, which identifies the needs of downtown, and the programs, projects and actions that

will be necessary to satisfy those needs and authorized the use of property tax increment pursuant to the DDA Statute; and

WHEREAS, the Town and DDA agree that contributing to redevelopment of the Mill Property furthers the objectives of the Downtown Plan (the “Downtown Plan”); and

WHEREAS, pursuant to C.R.S. §31-25-808, the DDA is empowered to cooperate with the Town, to enter into contracts with the Town and to make or receive from the Town grants, contributions and loans; and

WHEREAS, simultaneously with the execution of this Agreement, the parties have executed that certain Agreement for Economic Incentives and Inducements between and among the Town, the DDA and the Company (“Incentive Agreement”); and

WHEREAS, on March 14, 2016, the Town and DDA entered into that certain Amended and Restated Intergovernmental Agreement Between the Town of Windsor, Colorado and the Windsor Downtown Development Authority Regarding Continuing Town Support of the Windsor Downtown Development Authority (“2016 IGA”), which provided Town funding for DDA operations and capital projects for a five-year period through March 14, 2021; and

WHEREAS, in order to facilitate the parties’ contributions to redevelopment of the Mill Property, certain aspects of the 2016 IGA require modification; and

WHEREAS, the parties intend that this Agreement will modify the terms of the 2016 IGA only as to the matters set forth herein; and

WHEREAS, except as expressly modified herein, the parties reaffirm the 2016 IGA.

NOW, THEREFORE, in consideration of the mutual promises and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE ONE
DEFINITIONS

1.1 “Project Property Tax Increment Revenues” means all revenues derived in each fiscal year from the levy of *ad valorem* taxes at the rate fixed each year by or for each public body having taxing power over the Mill Property upon that portion of the valuation for assessment of the Mill Property within the boundaries of such public body that is in excess of the valuation for assessment on the date that the Mill Property was added to the DDA Boundaries by valid legislative action of the Town, all in accordance with Section 31-25-807(3) of the DDA Statute, less any collection fees lawfully payable to the Town or to Weld County, for services rendered in connection with the collection of such *ad valorem* taxes.

1.2 “Project Sales Tax Increment Revenues” means all revenue derived from the Town’s sales tax rate as applied to retail activity within the Mill Property, less any portion previously set aside for construction and expansion of the Windsor Community Recreation Center under Windsor Municipal Code Section 4-2-20 (2) and 4-2-20 (9).

**ARTICLE TWO
DISPOSITION OF DDA RESERVE FUNDS**

2.1 Conditions for Disposition of DDA Reserve funds.

- a. Following execution of the Incentive Agreement by the Town, the Company and the DDA, the DDA will be authorized to pay the sum of Five-Hundred Thousand Dollars (\$500,000.00) from the DDA Reserve Fund (“Reserve Fund Contribution”) to the Company or its Designee as provided in Subsection 6.1 below upon satisfaction of all of the following contingencies:
 - (i) Evidence submitted to the DDA and the Town by the Company of an executed construction contract (“Construction Contract”) for the Mill Project with the lowest responsible construction firm after seeking at least three bids therefor (“Construction Company”);
 - (ii) Receipt of a building permit from the Town for the Mill Project;
 - (iii) Review and approval by the Town and the DDA of the specific Public Capital Improvements and the Eligible Façade Improvements (both terms as defined in the Incentive Agreement) to be paid for pursuant to this Agreement and the Incentive Agreement and their respective costs in accordance with the Construction Contract;
 - (iv) Preparation and establishment by the Company of the Escrow Agreement (as defined and described in the Incentive Agreement) and full funding of an Escrow Account in accordance with the Escrow Agreement; and
 - (v) Execution of the Façade Easement Agreement by the DDA and the Company (as defined in the Incentive Agreement).
- b. Except as to the Reserve Fund Contribution, the DDA shall be entitled to accumulate, retain and dispose of its current and future Reserve Fund as set forth in the 2016 IGA.

2.2 Disposition of Reserve Fund Contribution.

- a. **Public Capital Improvements/Purchase of Façade Easements.** The DDA shall use the Reserve Fund Contribution to pay the cost of Public Capital Improvements and for the payment of Eligible Façade Improvements through the purchase of Façade Easements in accordance with the terms of the Incentive Agreement and the Façade Easement Agreement.
- b. **Construction Company.** As a condition of the disposition of the Reserve Fund Contribution and in recognition of the intended use of DDA Reserve Funds under the 2016 Agreement, the Company shall retain the Construction Company to install

and construct the Eligible Façade Improvements and the Public Capital Improvements, all pursuant to the requirements of the Incentive Agreement and the Façade Easement Agreement. The specific terms for specifications, construction, completion and dedication of the Public Capital Improvements shall be subject to negotiation between the Company and the Construction Company, but the Public Capital Improvements and the Eligible Façade Improvements for which payment is provided herein will be subject to approval by the Town and the DDA as provided in the Incentive Agreement and the Façade Easement Agreement.

- c. **Cost of Public Capital Improvements Not Limited to Reserve Fund Contribution.** The parties recognize that the total cost of the Public Capital Improvements likely will exceed the amount of the Reserve Fund Contribution. It is understood that, pursuant to Article Three below, the Town will provide the DDA with an additional One Million Eight Hundred Forty Thousand dollars (\$1,840,000) to pay any such excess Public Capital Improvements costs without further direct contribution from the DDA and to pay costs of the Eligible Façade Improvements.

ARTICLE THREE ADDITIONAL TOWN CONTRIBUTION FOR PUBLIC CAPITAL IMPROVEMENTS AND ELIGIBLE FAÇADE IMPROVEMENTS

3.1 Additional Town Contribution

Upon satisfaction of the conditions set forth in Section 2.1.a(i) – (v) above, the Town will transfer to the DDA a sum not to exceed One Million Eight Hundred Forty Thousand Dollars (\$1,840,000) for disposition in accordance with Section 3.2 below (“Town Additional Contribution”).

3.2 DDA Application of Town Additional Contribution.

The Town Additional Contribution will be applied by the DDA to the following:

- (a) Payment of the costs of Public Capital Improvements in excess of those paid by the DDA Reserve Fund, if any;
- (b) Purchase of Façade Easements, as defined in, and in accordance with the terms of the Incentive Agreement and the Façade Easement Agreement.

3.3 Disposition of Remaining Town Funds.

To the extent that the Additional Town Contribution is not applied to the cost of Public Capital Improvements and purchase of Façade Easements as set forth in this Article, such remaining funds will be returned to the Town and paid by the Town directly to the Company as provided in the Incentive Agreement.

ARTICLE FOUR MODIFICATION OF 2016 IGA SALES TAX INCREMENT PROVISIONS

4.1. Sales Tax Increment from Mill Project.

Subject to the provisions of Subsection 4.2 below, the Town and DDA reaffirm the collection and disposition of the “Sales Tax Increment” as defined and provided in Section 1.2.c. of the 2016 IGA.

4.2. Sales Tax Increment from Mill Property.

- a. **Project Sales Tax Increment.** The Project Sales Tax Increment, when collected, shall be retained by the Town. Nothing herein shall modify the terms for DDA receipt of all other Sales Tax Increment generated by other property within the DDA boundaries.

- b. **Town’s Disposition of the Project Sales Tax Increment Pursuant to Incentive Agreement.** Until payment in full of the sum of One Million Three Hundred Sixty Thousand Dollars (\$1,360,000) from a combination of Project Property Tax Increment Revenues paid by the DDA to the Company and the Project Sales Tax Increment Revenues paid by the Town to the Company under the Incentive Agreement (the “Tax Increment Reimbursement Amount”), the Town shall pay an amount equal to fifty percent (50%) of the Project Sales Tax Increment. The remaining fifty percent (50%) of the Project Sales Tax Increment shall be retained by the Town.

- c. **Town’s Permanent Retention of Mill Sales Tax Increment.** Once the parties’ obligations for payment of the Tax Increment Reimbursement Amount to the Company under the Incentive Agreement have been fully satisfied, the Town shall have the permanent right to retain and dispose of the Project Sales Tax Increment in any manner deemed fit by the Town.

4.3. Sales Tax Base Not Affected. Nothing herein shall be deemed a modification of the terms with respect to the Sales Tax Base, as defined and provided for in Section 1.2.b. of the 2016 IGA.

**ARTICLE FIVE
POTENTIAL RECONCILIATION OF
SALES AND PROPERTY TAX INCREMENT
CONTRIBUTIONS TO THE MILL REDEVELOPMENT**

5.1 Maximum Town and DDA Tax Increment Contributions. Notwithstanding how much of the Tax Increment Reimbursement Amount is paid to the Company from Project Sales Tax Increment versus Project Property Tax Increment, the Town and the DDA agree that, as between themselves, the Town should ultimately contribute to the Company Project Sales Tax Increment in the amount of Six Hundred Six Thousand Dollars (\$606,000) and the DDA should ultimately contribute to the Company Project Property Tax Increment in the amount of Seven Hundred Fifty-four Thousand Dollars (\$754,000).

5.2 Reconciliation. Since the Incentive Agreement provides for fifty percent (50%) of both the Project Sales Tax increment and the Project Property Tax Increment to be reimbursed annually to the Company, and since it is uncertain how much each tax increment source will annually produce, there may be a need for a reconciliation of the amounts which have actually been paid from each fund against the Town and DDA tax increment maximums described in Subsection 5.1 above.

5.3 Compensation for Overpayment. After the Tax Increment Reimbursement Amount is paid in full, if it is determined that either the Town or the DDA has paid the Company more than its respective agreed-upon maximum of the Tax Increment Reimbursement Amount as set forth in Subsection 5.1 above, the party which made the excess payment shall be compensated in one or more of the following methods:

- (i) Cash transfer(s);
- (ii) Credits or offsets for revenue payable or receivable under the 2016 IGA, or any successor agreement(s) between the Town and the DDA;
- (iii) Transfers of real or personal property from one party to the other;
- (iv) Exchanges of administrative or operational services between the parties.

5.3.1 The reconciliation requirements of this Article Three shall assure that the DDA pays Project Property Tax Increment in a final, net amount no greater than Seven Hundred Fifty-four Thousand Dollars (\$754,000).

5.3.2 The reconciliation requirements of this Article Three shall assure that the Town pays Project Sales Tax Increment in a final, net amount no greater than \$606,000.

ARTICLE SIX MISCELLANEOUS

6.1 Company Designee.

The Company may identify one or more persons to receive payments required under this Agreement (“Designee”) by notifying the Town and the DDA in writing no less than thirty (30) days before such Designee will be recognized as eligible for receipt of funds by the Town and the DDA.

6.2 Reaffirmation of Remaining Provisions of 2016 IGA. The parties reaffirm the terms of the 2016 IGA, except as specifically modified herein.

6.3 Notices. All notices to be given to parties hereunder shall be in writing and shall be sent by certified mail to the addresses specified below:

If to the DDA: Windsor Downtown Development Authority

Attn: Chairperson
P.O. Box 381
Windsor, CO 80550

With a copy to: Liley Law Offices, LLC
Attn: Lucia A. Liley, Esq.
419 Canyon Ave., Ste.220
Fort Collins, CO 80521

If to the Town: Town of Windsor
Attn: Town Manager
301 Walnut Street
Windsor, CO 80550

With a copy to: Windsor Town Attorney's Office
Attn: Ian McCargar, Town Attorney
301 Walnut Street
Windsor, CO 80550

6.4 Governing Law. This IGA shall be governed by, and its terms construed under the laws of the State of Colorado.

6.5 Third Party Beneficiaries. It is the mutual intent of the parties hereto that this Agreement shall inure to the benefit of only the parties hereto. Accordingly, nothing in this IGA shall be construed as creating any right or entitlement which inures to the benefit of any third party.

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

6.7 Benefit, Binding Effect, Covenant. The parties hereto recognize that there are legal constraints imposed upon them by the constitution, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon them by their respective governing statutes, charters, ordinances, rules and regulations, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the parties be obligated hereunder to exercise any power or take any action that is 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.

**ARTICLE SEVEN
CONTINGENT ON EXECUTION
OF INCENTIVE AGREEMENT**

This IGA is contingent upon the satisfaction, no later than December 31, 2018, of both of the following contingencies: (i) receipt by the Company of a temporary or permanent certificate of occupancy from the Town for the Mill Project; and (ii) evidence submitted to the Town and the DDA by the Company that leases, each for an initial term of five (5) years, have been executed for at least fifty percent (50%) of the gross leasable space within the Mill Project for uses generally consistent with the Mill Project plans attached as Exhibit B to the Incentive Agreement and approved in final form by the Town and the DDA, which approval shall not be unreasonably withheld. In the event that such contingencies are not satisfied by the stated deadline, this IGA shall be automatically terminated and deemed null, void and of no effect, provided, however, that such termination shall not affect the validity of the 2016 IGA.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF WINDSOR, COLORADO, a municipal corporation

By: _____
Kelly Arnold, Town Manager

ATTEST:

Patti Garcia, Town Clerk

[Seal]

APPROVED AS TO FORM:

Ian McCargar, Town Attorney

WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic

By: _____
Bob Winter, Chairperson

ATTEST:

Craig Peterson, Secretary

WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY

RESOLUTION # _____

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY AND THE TOWN OF WINDSOR, COLORADO, MODIFYING THE MARCH 14, 2016 INTERGOVERNMENTAL AGREEMENT BETWEEN SAID PARTIES REGARDING FUNDING FOR REDEVELOPMENT OF THE WINDSOR MILL AND ELEVATOR PROPERTY

WHEREAS, the Town of Windsor ("Town") is a Colorado home rule municipality with all powers and authority provided by Colorado law;

WHEREAS, by Ordinance No. 2011-1401, the Town created and established the Windsor, Colorado, Downtown Development Authority ("DDA") with all the purposes and powers now or hereafter authorized by Part 8 of Colorado Revised Statutes Title 31, Article 25 (the "DDA Statute"), and all additional and supplemental powers necessary or convenient to carry out and effectuate the purposes and provisions of said Part 8 within the boundaries of the DDA as such boundaries presently exist and may in the future be expanded, and has approved the DDA's Plan of Development;

WHEREAS, the DDA Statute has declared that the organization of downtown development authorities serves a public use; promotes the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; halts or prevents deterioration of property values or structures within central business districts; halts or prevents the growth of blighted areas within such districts, and assists municipalities in the development and redevelopment of downtowns and in the overall planning to restore or provide for the continuance of the health thereof;

WHEREAS, the Windsor Mill and Elevator, located at the southeast corner of 3rd Street and Main Street (Colorado Highway 392), was built in 1899 and used as a flour and feed mill until 1990; it stands as a landmark structure in the downtown and shapes a lasting impression of Windsor to both residents and visitors (the "Mill Property");

WHEREAS, the Mill Property was significantly damaged by a tornado in 2008, with the resulting damage and associated costs of repair greatly hindering restoration efforts;

WHEREAS, in 2014, a Feasibility Study was completed by the DDA with assistance from the Colorado Department of Local Affairs to explore the viability of reusing the structure with recommendations presented that indicated the Mill could be restored for an estimated \$9.2 million, and that "identifying funding is the biggest challenge facing the redevelopment

effort," indicating that the best options would include private investment "and public funding as needed to bridge gaps;"

WHEREAS, the DDA has prioritized revitalization of the Mill Property as one of four key initiatives of its 2016 Strategic Plan, noting that "The DDA Board is ready to enthusiastically support partnering with the Town and the Mill Owners to motivate action in redeveloping this landmark into an iconic gateway to downtown;"

WHEREAS, the citizens of Windsor have consistently urged that the Town make revitalization of the Mill Property a top priority;

WHEREAS, Old Windsor Mill, LLC, a Colorado limited liability company (the "Company") has proposed to purchase and make significant improvements to the Mill generally anticipating the following combination of uses: a brewpub, cocktail bar and dining facility open to the public, and office space available for rental occupancy ("Project");

WHEREAS, the significant cost premium for rehabilitating an existing historic structure versus new construction inherently creates a lease premium that would result in exorbitant lease rates nearly double that of existing downtown rates, demonstrating the magnitude of the funding gap needed to be bridged to bring restoration of the Mill to fruition;

WHEREAS, the Company has requested financial assistance from the DDA and the Town in order to make redevelopment of the Mill Property feasible;

WHEREAS, the Town and the DDA consider revitalization of the Mill Property to be a catalyst project which will create increased interest and investment in surrounding properties in the downtown and provide overall economic benefit to the Town and DDA;

WHEREAS, according to the Town's independent fiscal analysis, the Project will bring increased retail sales tax and ad valorem property tax revenue to the Town and the DDA and enabling the expansion of the DDA's programs and initiatives to create a prosperous downtown; and

WHEREAS, the Project is a valuable undertaking that furthers the objectives set forth in the Town's 2016 Comprehensive Plan, and its 2010 Downtown Design Guidelines and Financing Plans, as well as the DDA's 2016 Strategic Plan and its Plan of Development;

WHEREAS, on March 14, 2016, the Town and DDA entered into that certain Amended and Restated Intergovernmental Agreement Between the Town of Windsor, Colorado and the Windsor Downtown Development Authority Regarding Continuing Town Support of the Windsor Downtown Development Authority ("2016 IGA"), which provided Town funding for DDA operations and capital projects for a five-year period through March 14, 2021;

WHEREAS, in order to facilitate the parties' contributions to redevelopment of the Mill Property, certain aspects of the 2016 IGA require modification;

WHEREAS, the parties intend that this Intergovernmental Agreement will modify the terms of the 2016 IGA only as to the matters set forth herein; and

WHEREAS, except as expressly modified herein, the parties reaffirm the 2016 IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY AS FOLLOWS:

1. The attached Intergovernmental Agreement between the DDA and the Town modifying the March 14, 2016 Intergovernmental Agreement regarding funding for redevelopment of the Windsor Mill and Elevator Property between the Town and the DDA is approved.
2. The Chairman of the DDA is authorized to execute said agreement on the DDA's behalf.
3. DDA legal counsel and the DDA executive director are authorized to approve changes to said agreement relating to increasing legal protections and benefits for the DDA, as well as grammatical and other minor changes of a non-substantive nature.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 29th day of November, 2016.

WINDSOR, COLORADO, DOWNTOWN
DEVELOPMENT AUTHORITY

By: _____
Bob Winter, Chairman

ATTEST:

Craig Peterson, Secretary

FACADE EASEMENT AGREEMENT

This FACADE EASEMENT AGREEMENT (“Agreement”) is made and entered into on the date set forth below by and between THE WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic, (the “DDA”); and OLD WINDSOR MILL, LLC, a Colorado limited liability company (the “Company”).

WITNESSETH:

WHEREAS, the Town of Windsor, Colorado (the “Town”) has heretofore established the DDA, a duly organized and existing downtown development DDA under the Constitution and laws of the State of Colorado, including, particularly, Title 31, Article 25, Part 8, Colorado Revised Statutes, as amended (the “Downtown Development Authority Act”) and has approved the Plan of Development of the DDA (the “Plan of Development”);

WHEREAS, the Plan of Development contains a provision for division of taxes as authorized by the Downtown Development Authority Act effective for thirty (30) years beginning June 27, 2011;

WHEREAS, the Windsor Mill, located at the southeast corner of 3rd Street and Main Street (Colorado Highway 392), was built in 1899 and used as a flour and feed mill until 1990; it stands as a landmark structure in the downtown and shapes a lasting impression of Windsor to both residents and visitors (the “Mill”);

WHEREAS, the Mill was significantly damaged by a tornado in 2008, with the resulting damage and associated costs of repair greatly hindering restoration efforts;

WHEREAS, the deteriorating state of the Mill has been the subject of ongoing community discussion, including mention as a critical action item in the Town’s 2016-2018 Strategic Plan, with the stated initiative to “Partner with a developer to renovate and establish a commercially viable entity at The Mill;”

WHEREAS, the DDA has also prioritized revitalization of the Mill as one of four key initiatives of its 2016 Strategic Plan, noting that “The DDA Board is ready to enthusiastically support partnering with the Town and the Mill Owners to motivate action in redeveloping this landmark into an iconic gateway to downtown;”

WHEREAS, in 2014, a Feasibility Study was completed by the DDA with assistance from the Colorado Department of Local Affairs to explore the viability of reusing the structure with recommendations presented that indicated the Mill could be restored for an estimated \$9.2 million, and that “identifying funding is the biggest

challenge facing the redevelopment effort,” indicating that the best options would include private investment “and public funding as needed to bridge gaps;”

WHEREAS, the Company has presented a conceptual development proposal for the Mill generally anticipating the following combination of uses: a brewpub, cocktail bar and dining facility open to the public, and office space available for rental occupancy;

WHEREAS, the LLC has requested financial assistance from the DDA and the Town in order to make redevelopment of the Mill feasible;

WHEREAS, a secondary key initiative identified by the DDA’s 2016 Strategic Plan is DDA Growth and Sustainability, with the express goal of supporting the renovation of existing buildings in an effort to grow the local tax base, which will enable the expansion of the DDA’s programs and initiatives which seek to create a prosperous downtown;

WHEREAS, the significant cost premium for rehabilitating an existing historic structure versus new construction inherently creates a lease premium that would result in exorbitant lease rates nearly double that of existing downtown rates, demonstrating the magnitude of the funding gap needed to be bridged to bring restoration of the Mill to fruition;

WHEREAS, the Town and the DDA consider the Mill to be a catalyst project which will create increased interest and investment in surrounding properties in the downtown;

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

WHEREAS, in order to encourage the Project and to further the Plan of Development, the Board has determined that the DDA shall enter into this Agreement with the Company whereby the Company will agree to grant an easement to the DDA over eligible facades of the Mill in exchange for the payment by the DDA to the Company from a portion of the Project Property Tax Increment Revenues, as hereinafter defined, of certain eligible costs of façade improvements, in accordance with the terms and conditions set forth herein;

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

WHEREAS, the DDA has determined that entering into this Agreement is consistent with and in furtherance of the purposes of the DDA and is consistent with the Downtown Development Authority Act; and

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

NOW, THEREFORE, in consideration of the promises contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows.

SECTION 1. DEFINITIONS

For purposes of this Agreement, capitalized terms used herein and not otherwise defined herein shall have the meanings set forth below:

1.1 “Board” means the Board of Directors of the DDA.

1.2 “Certificate of Occupancy” shall have the same meaning as set forth in the Town Code.

1.3 “Completed” or “Completion” means, when used in reference to the Project, eligible for a Temporary or Final Certificate of Occupancy under the Town Code.

1.4 “County” means Weld County, Colorado.

1.5 “DDA” means The Windsor, Colorado, Downtown Development DDA, a duly organized and existing downtown development DDA under the Constitution and laws of the State of Colorado, including, particularly, Title 31, Article 25, Part 8, Colorado Revised Statutes, as amended.

1.6 “DDA District” means the area described in the Plan of Development and approved by Resolution No. 2011-26, and as may hereafter be amended by valid legislative action of the Town.

1.7 “Downtown Development Authority Act” means Title 31, Article 25, Part 8, Colorado Revised Statutes, as amended.

1.8 “Eligible Costs” means the reasonable and necessary expenditures to construct the Eligible Façade Improvements as certified by the Company and verified by the DDA.

1.9 “Eligible Façade Improvements” means improvements to the Eligible Facades, including fascia, soffits, exterior walls, signage, doors, windows, canopies and structural support materials therefor, which are depicted on Exhibit “A” attached hereto and by this reference made a part hereof.

1.10 “Eligible Facades” means the north, east and south facades of the renovated Mill building within the Project and any other facades within the Project which the DDA Board deems eligible.

1.11 “Façade Design Policies” means those adopted policies of the Board relating to design of façade improvements for which DDA funding has been requested as set forth in Exhibit “B” attached hereto and by this reference made a part hereof.

1.12 “Façade Easement” means the easement granted by the Company to the DDA over the Eligible Facades in accordance with the terms and conditions of this Agreement.

1.13 “Façade Improvements” means Eligible Façade Improvements constructed to Eligible Facades, the Eligible Costs of which have been approved by the Board for reimbursement to the Company subject to the limitations of this Agreement..

1.14 “Incentive Agreement” means the Agreement for Economic Incentives and Inducements between the Town, the DDA and the Company dated _____, 2016, and approved by Resolution _____ of the DDA and Resolution _____ of the Town.

1.15 “Plan of Development” means the Plan of Development for the DDA, as amended from time to time, approved by the DDA Board and the Town Board in accordance with the Downtown Development Authority Act.

1.16 “Project” means the Company’s conceptual development plans for the Property generally including the following combination of uses: a brewpub, cocktail bar and dining facility open to the public, and office space available for rental occupancy as more specifically depicted on Exhibit “C” attached hereto and by this reference made a part hereof.

1.17 “Property” means the real property on which the Mill is located, which is legally described on Exhibit “D” attached hereto and by this reference made a part hereof.

1.18 “Project Property Tax Increment Revenues” means all revenues derived in each fiscal year from the levy of *ad valorem* taxes at the rate fixed each year by or for each public body having taxing power over the Property upon that portion of the

valuation for assessment of the Property within the boundaries of such public body that is in excess of the valuation for assessment on the date that the Property was added to the District by valid legislative action of the Town, all in accordance with Section 31-25-807(3) of the Downtown Development Authority Act, less any collection fees lawfully payable to the Town or to Weld County, for services rendered in connection with the collection of such *ad valorem* taxes.

1.19 “Project Sales Tax Increment Revenues” means all revenue derived from the Town’s sales tax rate as applied to retail activity within the Property, less any portion previously set aside for construction and expansion of the Windsor Community Recreation Center under *Windsor Municipal Code* Section 4-2-20 (2) and 4-2-20 (9).

1.20 “Property Tax Increment Period” means the period of time during which the Town is authorized under state law to receive Project Property Tax Increment Revenues pursuant to the Downtown Development Authority Act. As of the date of this Agreement, the Property Tax Increment Period terminates on June 27, 2041.

1.21 “Public Capital Improvements” means those public capital improvements intended for dedication to the Town and required by Town regulations in order for the Project to receive a certificate of occupancy.

1.22 “Tax Increment Reimbursement Amount” means a total of One Million Three Hundred Sixty Thousand Dollars (\$1,360,000.00) which amount is a combination of payments to the Company by the Town from Project Sales Tax Increment Revenues, and by the DDA from Project Property Tax Increment Revenues pursuant to the Incentive Agreement and this Agreement.

1.23 “Town” means the Town of Windsor, Colorado, a home rule municipal corporation.

1.24 “Town Board” means the Town Board of the Town.

1.25 “Town Code” means the Municipal Code of the Town.

SECTION 2. REPRESENTATIONS AND COVENANTS

2.1 The DDA represents and covenants that:

- (a) The DDA is a duly organized and existing downtown development DDA under the Constitution and laws of the State of Colorado, including, particularly, the Downtown Development Authority Act.

- (b) There is no litigation or administrative proceeding pending or, to the knowledge of the DDA, threatened in writing, seeking to question the authority of the DDA to enter into or perform this Agreement.
- (c) The DDA has the authority to enter into this Agreement, and the Board has properly and regularly authorized the DDA to enter into this Agreement. This Agreement constitutes a valid and binding obligation of the DDA, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.
- (d) The DDA shall cooperate with the Company in taking reasonable actions to defend against any litigation brought by a third party concerning this Agreement or any other agreements contemplated herein.

2.2 The Company represents and covenants that:

- (a) The Company is a corporation, duly organized and validly existing under the laws of the State of Colorado, is authorized to do business in the State of Colorado, is not in violation of any provisions of its organizational documents or, to its knowledge, the laws of the State of Colorado.
- (b) The Company has the power and legal right to enter into the Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action, which Agreement shall be enforceable against the Company in accordance with its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.
- (c) The consummation of the transactions contemplated by this Agreement shall not violate any provision of the governing documents of the Company or, to its knowledge, constitute a default or result in the breach of any term or provision of any contract or agreement to which the Company is a party or by which it is bound.
- (d) To its knowledge, there is no litigation, proceeding, or investigation contesting the power or authority of the Company with respect to the Project or this Agreement or any other agreements contemplated herein, and the Company is unaware of that any such litigation, proceeding, or investigation has been threatened.

- (e) The Company shall cooperate with the DDA in taking reasonable actions to defend against any litigation brought by a third party concerning this Agreement or any other agreements contemplated herein.
- (f) The Company shall have no right to seek a reduction in the Project's property tax assessed valuation or to seek an abatement of property taxes, and the Company covenants that it will not seek such a reduction or abatement, until the Town and the DDA have fully paid the Tax Increment Reimbursement Amount required pursuant to this Agreement. In the event that the Company seeks, and successfully obtains, a reduction or abatement in the Property's property tax assessed valuation that results in the DDA's Project Property Tax Increment Revenues being less than the Tax Increment Reimbursement Amount, the Tax Increment Reimbursement Amount shall be reduced in an amount equal to the reduction in the Project Property Tax Increment Revenues. The Company shall provide written notice to the Town and to the DDA of any requested reduction in the Property's property tax assessed valuation or abatement of the Property's property taxes. A memorandum of this covenant shall be recorded with the County Clerk and Recorder's Office.
- (g) The Company acknowledges that the Town and the DDA have not made, and do not make, any representations to the Company or its representatives as to the tax consequences of any of the payments, contributions and/or reimbursements provided for in this Agreement. Under no circumstances will the Town or the DDA pay or reimburse any income tax liability, penalty or interest assessed against the Company.

SECTION 3. AGREEMENT CONTINGENCIES

This Agreement is contingent upon the following:

3.1 Evidence of Purchase. On or prior to March 1, 2017, or such later date as may be agreed upon between the Company and the DDA and the Town, the Company shall acquire fee simple title to the Property and shall submit written evidence of such purchase to the Town and the DDA. Nothing herein shall be construed to require the Company to acquire the Property as the site for the Project, nor to undertake the Project ("Purchase Contingency").

3.2 Receipt of Certificate of Occupancy and Executed Leases. Satisfaction no later than December 31, 2018 by the Company of the following: (i) receipt by the Company of a temporary or permanent certificate of occupancy from the Town for the Project; and (ii) evidence submitted to the Town by the Company that leases, each for an initial term of five (5) years, have been executed for at least fifty percent (50%) of the gross leasable space within the Project for uses generally consistent with the Project plans depicted on Exhibit C and approved in final form by the Town, which approval shall not be unreasonably withheld (“Project Completion and Lease Contingencies”).

3.3 Agreement Termination. In the event that the Company does not satisfy either the Purchase Contingency or the Project Completion and Lease Contingencies within the respective timeframes described in this Section 3, this Agreement shall thereupon automatically terminate and be null and void and all obligations of the DDA and the Town shall thereupon cease.

SECTION 4. CONTRIBUTIONS FOR PUBLIC CAPITAL IMPROVEMENTS AND PURCHASE OF FAÇADE EASEMENTS

4.1 Total DDA Contribution. The DDA shall contribute a total of Two Million Three Hundred Forty Thousand Dollars (\$2,340,000) to the Company (“Total Contribution”) for (i) the payment of Eligible Façade Improvements through the purchase of Façade Easements pursuant to the terms of this (“Down Payment”); and (ii) the payment of Public Capital Improvements, all in accordance with the following provisions.

4.1.1 Escrow Agreement. The Company shall prepare and execute an escrow agreement in a form satisfactory to the DDA and the Town (“Escrow Agreement”), and establish and fully fund an escrow account (“Escrow Account”), in accordance with the following terms and conditions:

- (a) Cash in the amount of the Total Contribution shall be placed by the Company in an escrow account to be used in accordance with the Escrow Agreement.
- (b) In the event that the Company does not satisfy either the Purchase Contingency or the Project Completion and Lease Contingencies within the respective time frames described in Section 3, then in that event, the amount of Five Hundred Thousand Dollars (\$500,000) in the Escrow Account shall be paid to the DDA and the amount of One Million Eight Hundred Forty Thousand Dollars (\$1,840,000) shall be paid to the Town.

4.1.2 Conditions Precedent to Payment. Prior to payment by the DDA and/or the Town to the Company of any portion of the Total Contribution, the following conditions shall be met by the Company (“Conditions Precedent”):

- (a) Evidence submitted to the DDA and the Town by the Company of an executed construction contract (“Construction Contract”) for the Project with a construction firm which, after seeking at least three bids therefor, is the lowest responsible bidder (“Construction Company”);
- (b) Receipt of a building permit from the Town for the Project;
- (c) Review and approval by the Town and the DDA of the specific Public Capital Improvements and the Eligible Façade Improvements to be funded pursuant to this Agreement, the costs of which shall be separately delineated in the Construction Contract;
- (d) Preparation and establishment by the Company of the Escrow Agreement and full funding of an Escrow Account in accordance with the Escrow Agreement; and
- (e) Execution of the Incentive Agreement by the DDA and the Company.

4.1.3 Periodic Payments. Payments will be made by the DDA to the Company or its designee (as defined in Subsection 4.14 below) within a reasonable period of time following receipt of a Construction Company invoice, with accompanying documentation, showing the Public Capital Improvements and the Eligible Façade Improvements which have been completed during the invoice period, and their respective costs, and such payments shall be continued until the earlier of the following two events: (i) payment of all Public Capital Improvements and Eligible Façade Improvements; or (ii) payments made by the DDA to the Company for such improvements equal the Total Contribution. Each such contractor invoice shall be approved by the Company prior to being sent to the DDA for payment.

4.1.4 Down Payment. The amount of the Total Contribution which is used to pay the Eligible Costs of the Eligible Façade Improvements shall be deemed the Down Payment on the purchase of Façade Easements. In the event that the conditions of the Escrow Agreement [Subsections 4.1.1(a) and (b) above] are not met by the Company, the Down Payment will be paid to the DDA and the Town from the monies in the Escrow Account.

4.1.5 Company Designee. The Company may identify one or more persons to receive payments required under this Agreement (“Designee”) by notifying the Town and the DDA in writing no less than thirty (30) days before such Designee

will be recognized as eligible for receipt of funds by the Town and the DDA. When notifying the Town and DDA of a Designee, the Company will provide the Designee name, address, contact information, and clear authority for the payment of funds to the Designee. Upon identification of a Designee or Designees by the Company, the Company will be deemed to have authorized the Town and the DDA to pay the Designee any sums owed to the Company by the Town or the DDA, except as may be limited or conditioned by the Company when identifying a Designee. The Company may rescind a Designee, and will do so in writing no less than thirty (30) days prior to the rescission taking effect.

4.2 Balance Remaining. In the event that there is a balance remaining after the payments contemplated in Subsection 4.2 above, the DDA shall return any such balance to the Town and the Town shall pay the same to the Company or its designee to be used for acquisition costs of the Property or construction costs of the Project.

4.3 Reimbursement From Third Parties. After the date of this Agreement, to the extent that the Company receives grants, contributions or reimbursements from anyone other than the Town or the DDA to offset or reimburse the Company for the Project, all such grants, contribution(s) or reimbursement(s) shall directly offset and reduce the Total Contribution.

SECTION 5. REIMBURSEMENT FOR ELIGIBLE FAÇADE IMPROVEMENTS/PURCHASE OF FAÇADE EASEMENTS.

5.1 Reimbursement. Subject to the Property Tax Increment Period and to the Company's compliance with all of the terms and conditions set forth in this Agreement, the DDA agrees to reimburse the Company for Eligible Costs of Eligible Façade Improvements up to the Tax Increment Reimbursement Amount, less the amount of the Down Payment, through the purchase of the Façade Easements as described in this Section 5.

5.2 Reimbursement Conditions. Subject to the limitations described in Subsection 4.1 above, the DDA's commitment to reimburse the Company for Eligible Costs of Eligible Façade Improvements through the purchase of Façade Easements is expressly contingent upon the satisfaction by the Company of all of the following conditions:

- (a) Approval by the Town of final development plans for construction of the Project in accordance with all applicable requirements of the Town Code.
- (b) Submittal by the Company, and approval by the Board of the final façade designs for Façade Improvements in accordance with the Façade

Design Policies. The DDA acknowledges that the Company has previously submitted to the Board conceptual designs of some of the Eligible Facades which, while conceptually satisfactory to the Board, did not have sufficient detail or certainty for the Board to approve as final designs.

- (c) Completion of construction of the Façade Improvements in accordance with the Board-approved final designs therefor.
- (d) Submittal to the DDA by the Company of an accurate and detailed accounting of the Eligible Costs of the Façade Improvements.
- (e) Satisfaction of the Project Completion and Lease Contingencies no later than December 31, 2018.
- (f) Delivery to and approval by the DDA, at the expense of the Company, of a title insurance commitment issued by a title insurance company licensed by the State of Colorado and doing business in the County showing the status of record title to the Property (the “Title Commitment”) which: (i) shall commit to insure title to the Façade Easements in the DDA in the amount of the Tax Increment Reimbursement Amount ; and (ii) shall commit to provide protection to the DDA against any lien, or right to a lien, imposed by law and not shown by the public records, and for services, labor or material furnished prior to acquisition of such Façade Easement.
- (g) Payment by the Company of closing costs charged by the title company, the premium for issuance of the title insurance policy based on the Title Commitment, and fees for recording of the Façade Easement.
- (h) Receipt by the DDA of Façade Easements for the Façade Improvements in substantially the form attached hereto as Exhibit “E” and incorporated herein by reference, which shall include signatures of all persons then having an ownership interest in the property over which the Façade Easements are being granted and the consent in writing of any lienholders of record against such property on the date of execution of the Façade Easements, as well as by any tenants or other lessees of such property on such date, with such written consents to be in the forms depicted as attachments to the Façade Easements.

5.3 Reimbursement Terms. Subject to the limitations described in Subsections 5.1 and 5.2 above, the DDA shall annually reimburse the Company for Eligible Costs of Eligible Façade Improvements in an amount equal to fifty percent (50%) of the Project

Property Tax Increment Revenues until the first to occur of the following two events: (i) the Tax Increment Reimbursement Amount, less the amount of the Down Payment, is paid in full from a combination of Project Sales Tax Increment Revenues paid by the Town to the Company and Project Property Tax Increment Revenues paid by the DDA to the Company pursuant to the Incentive Agreement and this Agreement, or (ii) reimbursement of all Eligible Costs of all Façade Improvements in accordance with the terms of this Agreement, (“Property Tax Increment Reimbursement Termination Date”). Such reimbursement by the DDA shall be in accordance with, and subject to, the following terms and conditions:

- (a) Commencing in 2018 (or 2019 if the Project is not Completed in 2017), the DDA’s payments toward the Tax Increment Reimbursement Amount, less the amount of the Down Payment, shall be tendered once annually to the Company on December 1st of each calendar year and each such payment shall capture fifty percent (50%) of Project Property Tax Increment Revenues received by the Town on behalf of the DDA prior to December 31st of the previous calendar year (“Annual Façade Reimbursement”).
- (b) The Annual Façade Reimbursement against the balance of the Tax Increment Reimbursement Amount shall continue until the earlier of: (i) the Property Tax Increment Reimbursement Termination Date; and (ii) the expiration of the Property Tax Increment Period, at which time the DDA shall be under no further obligation to reimburse the Company.
- (c) With the consent of the Town, the DDA may prepay in whole or in part any of the balance remaining on the Tax Increment Reimbursement Amount at any time without penalty.
- (d) The Tax Increment Reimbursement Amount shall not bear interest.
- (e) In no event shall the Company receive, or be entitled to receive, more than the Tax Increment Reimbursement Amount from the combined payments of the Town and the DDA from Project Sales Tax Increment Revenues and Project Property Tax Increment Revenues.
- (f) Reimbursement shall be subject to the annual approval by the Board, in its sole discretion, of a resolution recommending Town Board appropriation in an amount equal to the Annual Façade Reimbursement and the annual approval of the Town, in its sole discretion, of a resolution approving appropriation of an amount equal to the Annual Façade Reimbursement.

SECTION 6. THE COMPANY'S CONTINUING OBLIGATIONS

The Façade Easement shall be for a period of twenty-five (25) years and, shall contain the following continuing obligations of the Company:

6.1 Maintenance. The Company shall be obligated to maintain and repair the Façade Improvements, including replacement of all or a part thereof if necessary, in a manner which will preserve the Façade Improvements in substantially the same condition as that existing at the time of their completion. The Company shall further be obligated to maintain the building to which the Façade Improvements are affixed to the extent required to provide structural support for the Façade Improvements. The DDA shall have no maintenance obligation whatsoever for the Façade Improvements or such building and shall not be liable in any manner for any costs associated with either.

In the event that the Company, or its successors or assigns, shall fail to maintain and repair the Facade Improvements (or the associated building to provide support for such improvements) as required herein, the DDA shall give written notice to the Company, or their successors and assigns, requiring the Company to commence the requested maintenance and repair within thirty (30) days of receipt of such notice and to diligently complete such maintenance and repair within a reasonable amount of time thereafter as specified in such notice. If such work is not commenced or is not completed as required by such notice, the DDA may, in its sole discretion, cause such work to be completed and may thereafter assess the entire cost of such work against the Company, or their successors and assigns. The DDA shall have a lien on property described in each Façade Easement to secure any amount owed to it for repair and maintenance performed by it on account of the failure to maintain and repair the Facade Improvements or the associated building as required herein, together with attorneys' fees and costs incurred by the DDA in connection with such repair and maintenance and the lien proceedings, and such lien may be foreclosed as provided by law for the foreclosure of real estate mortgages.

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

6.3 Insurance. The Company shall purchase and maintain general liability coverage in connection with the property which is the subject of the Façade Easement, including the Façade Improvements, in amounts at least equal to the maximum amount of recovery against public entities and employees under the Colorado Governmental

Immunity Act (C.R.S. §24-10-101 et seq.) and any amendments to such limits which may from time to time be made. The DDA and the Town shall be named as additional insureds on all such policies. All insurance required hereunder shall be issued by an insurance company authorized to do business in Colorado which meets all of the requirements of the Division of Insurance for that purpose. The DDA may periodically require from the Company proof of the insurance coverage required herein.

SECTION 7. ENVIRONMENTAL CONDITIONS LIABILITY

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

SECTION 8. TENANT NOTIFICATION

The Company agrees that any lease agreements, excluding equipment leases, for the Project entered into after execution hereof shall be consistent with the terms and conditions of this Agreement and any Façade Easement applicable to such lease, and shall have incorporated therein all applicable requirements and restrictions of such documents regarding use and occupancy of the Project, including, by way of example and without limitation, the restrictions on alterations contained in the Façade Easement.

SECTION 9. TERM

Unless terminated sooner in accordance with Subsection 3.3 above, the term of this Agreement shall commence upon its execution and shall continue to that date which is the earlier of (i) twenty-eight (28) years from the execution of this Agreement; or (ii)

the expiration of the twenty-five (25) term of the Façade Easement granted by the Company to the DDA (the “Term”).

SECTION 10. COVENANTS

The provisions of this Agreement and the burdens and benefits herein shall be covenants running with the Property and shall inure to the benefit of, and be binding upon, the Company, its successors and assigns, and all future owners, tenants and lessees of the Property during the Term. Upon expiration of the Term, this Agreement shall terminate and no longer affect title to the Property. Upon the granting of the Façade Easement granted pursuant to this Agreement, such Façade Easement shall each be recorded with the Clerk and Recorder of the County and the costs of recording shall be paid by the Company.

SECTION 11. LEGAL AVAILABILITY OF FUNDS

The Town’s and the DDA’s obligations herein shall be subject to the Constitution and laws of the State of Colorado and the Charter, including but not limited to, applicable prohibitions on multiple fiscal year obligations and the condition that all Town and DDA obligations are contingent upon the appropriation of funds by the Town Board and the DDA Board. The Town’s and the DDA’s obligations under this Agreement shall be deemed from year to year only and do not constitute mandatory payment obligations in any future fiscal year. This Agreement does not directly or indirectly obligate the Town or the DDA to make any payment beyond those for which funds have been appropriated as of the date of this Agreement. The Town Manager shall make a good faith effort to include in the budget recommendations and appropriation resolutions proposed to the Town Board, in each year prior to expiration of this Agreement, amounts sufficient to meet the Town’s and the DDA’s commitments hereunder, subject to the conditions and contingencies set forth herein. Notwithstanding the foregoing, the parties expressly acknowledge that the decision as to whether to appropriate such amounts is in the discretion of the Town Board and the DDA Board.

SECTION 12. ASSIGNMENT

The Company shall not assign all or any part of this Agreement, except:

- (a) With the prior written consent of the Town Board and the Board, which consent shall not be unreasonably withheld or conditioned; or
- (b) As collateral to a lender in connection with the financing of the Project; or

- (c) To a successor by merger, consolidation or by acquisition of all or a substantial portion of the shares or assets of the Company; or
- (d) In conjunction with a voluntary or involuntary bankruptcy filing by the Company.

SECTION 13. NOTICES

All notices to be given hereunder shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; or sent by a nationally recognized receipted overnight delivery service, including the United States Postal Service, United Parcel Service or Federal Express, for earliest delivery the next day. Any such notice shall be deemed to have been given and received as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit with the United States Postal Service, postage prepaid; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. Notice of a change of address of a party shall be given in the same manner as all other notices. The addresses for the mailing or delivering of notices shall be as follows:

DDA: The Windsor, Colorado,
Downtown Development Authority
Attn: Executive Director
301 Walnut Street
Windsor, CO 80550

With a copy to: Liley Law Offices, LLC
Attn: Lucia A. Liley, Esq.
419 Canyon Avenue, Suite 220
Fort Collins, CO 80521

If to Company:

SECTION 14. MISCELLANEOUS

14.1 Binding Effect. This Agreement inures to the benefit of and is binding upon the DDA and the Company and the Company’s assignees which are permitted pursuant to Section 14 of this Agreement.

14.2 Third-Party Beneficiaries. It is expressly acknowledged by the parties hereto that the Town is a third-party beneficiary to this Agreement and shall be entitled to enforce any and all provisions of this Agreement in the same manner as the DDA. The DDA is not obligated or liable under the terms of this Agreement to any person or entity

not a party hereto except any assignee permitted pursuant to Section 13 of this Agreement or the Town. Further, the DDA is not bound by any contracts or conditions that the Company may negotiate with third parties related to the Project.

14.3 Interpretation, Jurisdiction and Venue. This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado govern the validity, construction, enforcement and interpretation of this Agreement. Exclusive jurisdiction and venue for resolution of any dispute arising hereunder shall be in the Weld County, Colorado District Court.

14.4 Amendment. This Agreement may be amended only by a written instrument signed by the parties to this Agreement.

14.5 Additional Documents or Action. The parties to this Agreement agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement or is reasonably requested by another party to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof. If all or any portion of this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the parties to this Agreement, within the scope of their powers and duties, shall cooperate in the joint defense of such documents and, if such defense is unsuccessful, such parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each party substantially receives the benefits that it would have received under this Agreement.

14.6 Good Faith of Parties. In the performance of this Agreement or in considering any requested approval, consent, acceptance, or extension of time, the parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

14.7 Waiver of Breach. Any waiver of any requirement or obligation hereunder must be in writing to be effective. Any waiver by any party to this Agreement of any term or provision of this Agreement shall be narrowly construed, and shall not operate or be construed as a subsequent or continuing waiver of said term or provision.

14.8 Article and Section Captions. The captions of the articles and sections of this Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

14.9 Town, DDA and Company Not Partners. Notwithstanding any language in this Agreement, neither the Town nor the DDA is a member, partner, or joint venturer of the Company, and neither the Town nor the DDA shall be responsible for any debt or liability of the Company or its contractors or agents. The Company is not responsible for any debt or liability of the Town, the DDA, or their respective contractors or agents.

14.10 Severability. If any portion or portions of this Agreement are determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect as if such illegal or unenforceable portion or portions did not exist. If all or any portion of the payments required by the terms of this Agreement are determined, by a court of competent jurisdiction in a final non-appealable judgment, to be contrary to public policy or otherwise precluded, and if the decision of such court clearly indicates how the payments may be made differently and in a manner that is legal, valid and enforceable, then the parties hereto shall utilize their reasonable, best, good faith efforts to promptly restructure and/or amend this Agreement in accordance with such court decision, or to enter into a new agreement, to assure, to the extent legally permissible, that all payments are made to the Company as contemplated by this Agreement.

14.11 Originals. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Agreement.

14.12 Joint Draft. The parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content.

14.13 Recording. The Façade Easement granted pursuant to this Agreement shall be recorded in the records of the Clerk and Recorder of the County and the costs of recording shall be paid by the Company.

SECTION 15. EVENTS OF DEFAULT; REMEDIES

15.1 Default or an event of default by the Company shall mean one or more of the following events:

- (a) Determination that any representation or warranty made in this Agreement by the Company was materially inaccurate when made or shall prove to be materially inaccurate;
- (b) The assignment of, or an attempt to assign, this Agreement by the Company in violation of Section 11 of this Agreement; or

- (c) The failure by the Company to substantially observe or perform any other material covenant, obligation or commitment required under this Agreement.

15.2 In order to exercise any remedy for default hereunder, upon the occurrence of any event of default, the Town or the DDA shall provide written notice to the Company. The Company must immediately proceed to cure or remedy such default, and in any event, such default shall be cured within thirty (30) days after receipt of the notice, or such longer time as the Town, the DDA and the Company agree in writing. Upon the failure of the Company to so cure any such default, the Town and the DDA shall have all remedies available to it, in law or in equity, excluding specific performance.

15.3 Default or an event of default by the DDA shall mean one or more of the following events:

- (a) A determination that any representation or warranty made in this Agreement by the DDA was materially inaccurate when made or shall prove to be materially inaccurate; or
- (b) The failure by the DDA to perform any nonmonetary, material covenant, obligation or agreement required of it under this Agreement.

15.4 In order to exercise any remedy for default hereunder, upon the occurrence of any event of default, the Company shall provide written notice to the DDA. The DDA must immediately proceed to cure or remedy such default, and in any event, such default shall be cured within thirty (30) days after receipt of the notice, or such longer time as the DDA and the Company agree in writing. Upon the failure of the DDA to so cure any such default, the Company shall have resort to specific performance as its sole and exclusive remedy.

15.5 Notwithstanding the foregoing or any provision to the contrary contained herein, any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God; fires; floods; earthquake; strikes; labor disputes; terrorism; regulation or order of civil or military authorities; or other causes, similar or dissimilar, which are beyond the control of such party.

SECTION 16. ATTORNEYS' FEES AND COSTS

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

DATED the date of the last signature written below.

THE WINDSOR, COLORADO,
DOWNTOWN DEVELOPMENT
AUTHORITY, a body corporate and politic

By: _____
Bob Winter, Chairman

Date: _____

ATTEST:

By: _____
Craig Peterson, Secretary

OLD WINDSOR MILL, LLC, a Colorado
limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____

List of Exhibits

Exhibit “A” Depiction of Eligible Façade Improvements

Exhibit “B” Façade Design Policies

Exhibit “C” Conceptual Development Proposal for the Project

Exhibit “D” Legal Description of the Property

Exhibit “E” Façade Easement

Exhibit “A”

Depiction of Eligible Façade Improvements

[Insert depictions of north, east and south facades prepared by VFLA]

Exhibit “B”

Façade Design Policies

Exhibit “C”

Conceptual Development Proposal for the Project

[Insert Site Plan prepared by Ripley Design]

Exhibit "D"

Legal Description of the Property

Parcel I:

Lots 2, 4, 6, 8, 10, 12, 14 and 16, Block 11, Town of Windsor, County of Weld, State of Colorado.

Parcel II:

A part of the Burlington and Northern Railroad Company's Greeley Branch Former Right of way lying in Section 21, Township 6 North, Range 67 West of the 6th P.M. , County of Weld, State of Colorado, being more particularly described as follows: Beginning at the intersection of the North line of Block 11, Town of Windsor with the Southerly line of said railroad right of way; thence South 88 degrees 30 minutes 20 seconds East along said North line of Block 11 produced Easterly a distance of 126.76 feet to the intersection of the East line of said Block 11 produced Northerly; thence South 01 degrees 27 minutes 27 seconds West along said East line of Block 11 produced Northerly, a distance of 40.00 feet to the Northeast corner of said Block 11 and said Southerly railroad right of way line; thence along said Southerly railroad right of way line, the following 2 courses: 1. North 71 degrees 00 minutes 09 seconds West a distance of 114.62 feet to a point of curvature; 2. Along said curve to the right having a radius of 11, 609.16 feet, a central angle of 00 degrees 05 minutes 25 seconds and an arc length of 18.32 feet to the point of beginning, County of Weld, State of Colorado. Said parcel also known as Lot 20, Burlington Subdivision, Town of Windsor, County of Weld, State of Colorado.

Exhibit "E"

Façade Easement Agreement

**DEED OF EASEMENT FOR FACADES
CONTAINING TERMS, CONDITIONS AND RESTRICTIONS**

_____ ("Grantor") is the owner of the following described real property located in _____, County, and legally described as follows:

[INSERT]

also known by street address as _____.
(the "Property").

In consideration of the DDA's payment, or promise of payment, made to Grantor pursuant to that certain agreement entitled "Façade Agreement" between Grantor and the DDA, the adequacy of which is hereby acknowledged, Grantor does hereby grant and convey, in accordance with the following terms and conditions, to the Windsor, Colorado, Downtown Development Authority, a body corporate and politic (the "DDA"), an easement over, under and across that portion of the Property constituting the _____ façade(s) of the Property, for the purpose of entering on, over and across the Property to preserve and maintain the Façade Improvements, as hereinafter defined, in accordance with the terms and conditions of this Deed of Easement for Facades ("Façade Easement").

1. TERM

The term of this Façade Easement shall be for a period of _____ (__) years, commencing upon execution of the same (the "Term").

2. COVENANT

This Façade Easement, and all terms and conditions herein contained, shall be a covenant running with the land and shall be binding upon Grantor, its successors and assigns, and all subsequent owners of the Property for the Term. Upon expiration of the Term, this Façade Easement shall terminate and no longer affect title to the Property. This Façade Easement shall be recorded with the Clerk and Recorder of Weld County, Colorado.

3. FACADE IMPROVEMENTS

The facade improvements shall consist of all improvements made to the _____ facade(s) of the building on the Property (including, as applicable, all facia, soffits, exterior walls, doors, windows, canopies and signage for the Grantor and tenants of the Property, and all structural support materials therefor), which are identified on **Attachment "A"** attached hereto and incorporated herein by reference (the "Façade Improvements").

4. MAINTENANCE

Grantor shall be obligated to maintain and repair the Facade Improvements, including replacement of all or a part thereof if necessary, in a manner which will preserve the Facade Improvements in substantially the same condition as that existing at the time of the completion of the Facade Improvements. Grantor shall further be obligated to maintain the Property to the extent required to provide structural support for the Facade Improvements which are attached to the Property. The DDA shall have no maintenance obligation whatsoever for the Facade Improvements or the Property and shall not be liable in any manner for any costs associated with the Facade Improvements or the Property.

In the event that Grantor shall fail to maintain and repair the Facade Improvements (or the Property to provide support for the Facade Improvements) as required herein, the DDA shall give written notice to Grantor requiring Grantor to commence the requested maintenance and repair within ten (10) days of receipt of such notice and to diligently complete such maintenance and repair within a reasonable amount of time thereafter as specified in such notice. If such work is not commenced or is not completed as required by such notice, the DDA may, in its sole discretion, cause such work to be completed and may thereafter assess the entire cost of such work against Grantor. The DDA shall have a lien on the Property to secure any amount owed to it for repair and maintenance performed by it on account of the failure to maintain and repair the Facade Improvements or the Property as required herein, and such lien may be foreclosed as provided by law for the foreclosure of real estate mortgages.

5. ALTERATIONS

No alteration of the Facade Improvements including, without limitation, alterations of or additions to the signage or canopies approved by the DDA and shown on **Attachment A** shall be made without the express written approval of the DDA, which approval shall not be unreasonably withheld. The DDA, in considering such requests, shall take into account the reasons for such request and whether the requested alteration is consistent with the historic character of the approved design for the Façade Improvements or is otherwise compatible with the character of the redeveloped properties within the downtown as well as the specific area in which it is located. Grantor shall be responsible for ensuring compliance with this Section 5 by all tenants or other occupants of the Property, and shall promptly take all such corrective action as may be necessary to remedy any violation hereof. The DDA shall not remove or alter the Facade Improvements except in performing any maintenance or repair thereof in accordance with this Facade Easement.

6. INDEMNIFICATION

Grantor shall indemnify and hold harmless the DDA and the Town of Windsor, Colorado (the "Town"), from and against any damage, liability, loss or expense (including attorneys' fees) incurred by the DDA or the Town arising out of or in any way connected with the Facade Improvements, their use, maintenance, repair or replacement, except with regard to any use, maintenance, repair or replacement made by the DDA or the Town, or their employees, agents or

contractors, or caused by the gross negligence or willful misconduct of the DDA or the Town, or their employees, agents or contractors. Further the Grantor shall indemnify and hold harmless the DDA and the Town from and against any damage, liability, loss or expense (including attorneys' fees and costs) incurred by the DDA or the Town arising out of, or in any way connected with the environmental conditions on, of or affecting the Property.

7. INSURANCE

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

8. SUCCESSOR ENTITY TO THE DDA

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

9. TITLE, AUTHORITY TO EXECUTE

Grantor states that it is the lawful fee simple owner of the Property and that it has the good and lawful right and authority to grant, sell and convey the Property or any part thereof; and that it will warrant the title to the Property. Each person executing this Agreement represents and warrants that he or she is duly authorized to execute this Façade Easement in his or individual or representative capacity as indicated.

10. LIEN HOLDER AND TENANT CONSENT

Grantor warrants that, as of the date of execution of this Easement, all lienholders of record, as well as all existing lessees of the Property, have consented in writing to the granting of this Façade Easement, as provided in **Attachment B-1 and B-2**, attached hereto and incorporated herein by reference.

DATED this _____ day of _____, 2014.

ATTACHMENT A
TO
DEED OF EASEMENT FOR FACADES
CONTAINING TERMS, CONDITIONS AND RESTRICTIONS

[INSERT DESIGNS]

ATTACHMENT B-1
TO
DEED OF EASEMENT FOR FACADES
CONTAINING TERMS, CONDITIONS AND RESTRICTIONS

LIENHOLDER CONSENT

By signing below, the Lienholder consents to the granting of the Façade Easement in accordance with the terms and conditions of this Easement without, however, joining in any of the obligations, warranties, guarantees or indemnities contained therein, and agrees that its liens and encumbrances, including but not limited to, deeds of trust, mortgages assignments thereof, along with any and all other of their right, title and interest in and to the Property, shall be subordinated to the Façade Easement.

LIENHOLDER:

(Date) By: _____
Printed Name: _____
Title: _____

STATE OF COLORADO)
)ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ (print name) as _____ (insert title) of _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY

RESOLUTION # _____

A RESOLUTION APPROVING A FAÇADE EASEMENT AGREEMENT BETWEEN THE WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY AND OLD WINDSOR MILL, LLC, WITH RESPECT TO THE REDEVELOPMENT OF THE WINDSOR MILL AND ELEVATOR PROPERTY

WHEREAS, the Town of Windsor (“Town”) is a Colorado home rule municipality with all powers and authority provided by Colorado law; and

WHEREAS, by Ordinance No. 2011-1401, the Town created and established the Windsor, Colorado, Downtown Development Authority (“DDA”) with all the purposes and powers now or hereafter authorized by Part 8 of Colorado Revised Statutes Title 31, Article 25 (the “DDA Statute”), and all additional and supplemental powers necessary or convenient to carry out and effectuate the purposes and provisions of said Part 8 within the boundaries of the DDA as such boundaries presently exist and may in the future be expanded, and has approved the DDA’s Plan of Development;

WHEREAS, the DDA Statute has declared that the organization of downtown development authorities serves a public use; promotes the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; halts or prevents deterioration of property values or structures within central business districts; halts or prevents the growth of blighted areas within such districts, and assists municipalities in the development and redevelopment of downtowns and in the overall planning to restore or provide for the continuance of the health thereof;

WHEREAS, the Windsor Mill and Elevator, located at the southeast corner of 3rd Street and Main Street (Colorado Highway 392), was built in 1899 and used as a flour and feed mill until 1990; it stands as a landmark structure in the downtown and shapes a lasting impression of Windsor to both residents and visitors (the "Mill Property");

WHEREAS, the Mill Property was significantly damaged by a tornado in 2008, with the resulting damage and associated costs of repair greatly hindering restoration efforts;

WHEREAS, in 2014, a Feasibility Study was completed by the DDA with assistance from the Colorado Department of Local Affairs to explore the viability of reusing the structure with recommendations presented that indicated the Mill could be restored for an estimated \$9.2 million, and that "identifying funding is the biggest challenge facing the redevelopment effort," indicating that the best options would include private investment "and public funding as needed to bridge gaps;"

WHEREAS, the DDA has prioritized revitalization of the Mill Property as one of four key initiatives of its 2016 Strategic Plan, noting that "The DDA Board is ready to enthusiastically support partnering with the Town and the Mill Owners to motivate action in redeveloping this landmark into an iconic gateway to downtown;"

WHEREAS, the citizens of Windsor have consistently urged that the Town make revitalization of the Mill Property a top priority;

WHEREAS, Old Windsor Mill, LLC, a Colorado limited liability company (the "Company") has proposed to purchase and make significant improvements to the Mill generally anticipating the following combination of uses: a brewpub, cocktail bar and dining facility open to the public, and office space available for rental occupancy ("Project");

WHEREAS, the significant cost premium for rehabilitating an existing historic structure versus new construction inherently creates a lease premium that would result in exorbitant lease rates nearly double that of existing downtown rates, demonstrating the magnitude of the funding gap needed to be bridged to bring restoration of the Mill to fruition;

WHEREAS, the Company has requested financial assistance from the DDA and the Town in order to make redevelopment of the Mill Property feasible;

WHEREAS, the Town and the DDA consider revitalization of the Mill Property to be a catalyst project which will create increased interest and investment in surrounding properties in the downtown and provide overall economic benefit to the Town and DDA;

WHEREAS, according to the Town's independent fiscal analysis, the Project will bring increased retail sales tax and ad valorem property tax revenue to the Town and the DDA and enabling the expansion of the DDA's programs and initiatives to create a prosperous downtown;

WHEREAS, the Project is a valuable undertaking that furthers the objectives set forth in the Town's 2016 Comprehensive Plan, and its 2010 Downtown Design Guidelines and Financing Plans, as well as the DDA's 2016 Strategic Plan and its Plan of Development;

WHEREAS, in order to encourage the Project and to further the Plan of Development, the DDA will enter into an agreement with the Company whereby the Company will agree to grant an easement to the DDA over eligible facades of the Mill Property in exchange for the payment by the DDA to the Company from a portion of the Project property tax increment revenues, of certain eligible costs of façade improvements, in accordance with the terms and conditions of said agreement (the "Façade Easement Agreement"); and

WHEREAS, the DDA has determined that entering into the Façade Easement Agreement is consistent with and in furtherance of the purposes of the DDA and is consistent with the Downtown Development Authority Act and the DDA's façade tax increment program policies.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE WINDSOR, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY AS FOLLOWS:

1. The attached Façade Easement Agreement between the DDA and the Company is approved.
2. The Chairman of the DDA is authorized to execute said agreement on the DDA's behalf.
3. DDA legal counsel and the DDA executive director are authorized to approve changes to said agreement relating to increasing legal protections and benefits for the DDA, as well as grammatical and other minor changes of a non-substantive nature.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 29th day of November, 2016.

WINDSOR, COLORADO, DOWNTOWN
DEVELOPMENT AUTHORITY

By: _____
Bob Winter, Chairman

ATTEST:

Craig Peterson, Secretary