

**DEVELOPMENT AGREEMENT TO  
SECURE PUBLIC BENEFITS FOR  
FOOTHILLS MALL REDEVELOPMENT**

THIS DEVELOPMENT AGREEMENT TO SECURE PUBLIC BENEFITS FOR FOOTHILLS MALL REDEVELOPMENT (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between the CITY OF FORT COLLINS, COLORADO, a home rule municipality of the State of Colorado (“City”) and MXD FORT COLLINS, LLC, a Delaware limited liability company (“Developer”).” The City and the Developer shall be collectively referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, the Developer is the owner of the real property described on **Exhibit A** attached hereto and incorporated herein by this reference (the “Property”), which is the retail development formerly referred to as the Foothills Mall; and

WHEREAS, the Developer desires to finance the necessary public improvements to redevelop the Property (the “Redevelopment”) and has caused to be submitted to the City all documents required for the approval of an amendment to the Service Plan (“Service Plan Amendment”) for the Foothills Metropolitan District (the “District”); and

WHEREAS, under the provisions of Article 1 of Title 32 of the Colorado Revised Statutes, the Council, by Resolution No. 2013-044, approved the Amended and Restated Service Plan for the District on May 7, 2013, and by Resolution 2025-059 approved the First Amendment to the Amended and Restated Service Plan (the “Service Plan Amendment”) for the District on May 20, 2025;

WHEREAS, on May 20, 2025, the Council approved this Agreement by Resolution 2025-060, to establish the manner by which public benefits are to be secured in conjunction with approval of the Service Plan Amendment and the Redevelopment; and

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

**I. PUBLIC BENEFITS**

**A. Affordable Housing.**

1. The Developer intends to submit to the City all plans, reports and other documents required for approval of a Final Development Plan (the “FDP”) for the Redevelopment, and the FDP is projected to include approximately three hundred (300) attached and multi-family dwelling units within the Property. A preliminary site plan of the Redevelopment is included as **Exhibit B** attached hereto and incorporated herein by this reference.

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2. At the time Developer submits the FDP to the City, it will designate an approximately 30,000 square foot parcel (the “Affordable Housing Parcel”) for the exclusive use of Affordable Housing (defined below) generally located in the area depicted on **Exhibit C** attached hereto and incorporated herein by this reference. Developer estimates that approximately fourteen (14) to twenty-eight (28) Affordable Housing units could be constructed on such Affordable Housing Parcel. As used herein, “Affordable Housing” shall be defined as affordable for households earning eighty percent (80%) of the area median income for a family of four for the Fort Collins/Loveland Metropolitan Statistical Area published annually by the U.S. Department of Housing and Urban Development (“AMI”), whether owner-occupied or leased.

3. The units on the Affordable Housing Parcel must remain as Affordable Housing in perpetuity and this requirement must be secured by a restrictive covenant or deed restriction (the “Affordability Restriction”) in a form reasonably acceptable to the City that is for the City's benefit and enforceable by the City at law and in equity and recorded with the Larimer County Clerk and Recorder.

4. Concurrent with approval of the FDP by the City, Developer will transfer or reserve the Affordable Housing Parcel using one of the following mechanisms or any other mechanism mutually agreed upon by the Developer and the City:

a. Execution of a contract for the donation or contribution of the Affordable Housing Parcel by the Developer to a non-profit or for-profit builder and the subsequent development of that land by such builder as the Affordable Housing with a legally enforceable contract obligation to the City in a form reasonably acceptable to the City to develop such land as Affordable Housing and to impose the Affordability Restriction.

b. A reservation of the Affordable Housing Parcel within the Property by the Developer for the benefit of and legally enforceable by the City at law and in equity for the eventual donation or contribution to an entity for development of the Affordable Housing.

5. Notwithstanding anything in this Agreement to the contrary, the Developer and the City may agree to a different definition of AMI if it provides a better incentive for achieving a particular Affordable Housing project.

B. City & Developer Acknowledgement. The City and Developer specifically acknowledge and agree that the public benefits as described and secured in Section I.A. above shall only be deemed to have occurred if and when the contingency in Section II.R. below is satisfied.

## II. MISCELLANEOUS

A. City Findings. The City hereby finds and determines that the approval of this Agreement is in the best interests of the public health, safety and general welfare of the City.

B. City Approvals. Where this Agreement requires the City's future approval or consent, such approval or consent may be given by the City Manager of the City within his or her

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sole discretion. Where this Agreement requires Council approval or consent, such approval or consent shall be within the Council's sole discretion.

C. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

D. Covenants/Binding Effect. This Agreement shall run with the Property, including any subsequent platting of all, or a portion of the Property. This Agreement shall also be binding upon and inure to the benefit of the Parties, their respective personal representatives, heirs, successors, grantees and assigns. The Parties agree that all improvements required pursuant to this Agreement touch and concern the Property regardless of whether such improvements are located on the Property. Assignment of interest within the meaning of this section shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement.

E. Default.

1. Notice; Cure. If any party defaults under this Agreement, a non-defaulting party may deliver written notice to the defaulting party of such default in accordance with Section II.L, and the defaulting party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting party gives written notice to the non-defaulting party within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such thirty (30) day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure and provided further that in no event shall such cure period exceed a total of six (6) months. Notwithstanding the cure period set forth in this Section II.E.1, Developer, its successors and assigns, shall have the right to include a claim for breach of this Agreement in any action brought under C.R.C.P. Rule 106 if Developer, its successors and assigns, believes that the failure to include such claim may jeopardize its ability to exercise its remedies with respect to this Agreement at a later date. Any claim for breach of this Agreement brought before the expiration of the applicable cure period set forth in this Section II.F. shall not be prosecuted by any Party, its successors and assigns, until the expiration of such cure period except as set forth in this Agreement, and shall be dismissed by such Party, its successors and assigns, if the default is cured in accordance with this Section II.E.

2. Remedies. If any default under this Agreement is not cured as described above, any non-defaulting party shall have the right to enforce the defaulting party's obligation hereunder by an action at law or in equity, including, without limitation, injunction and/or specific performance, and shall be entitled to an award of any damages available at law or in equity.

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F. Governing Law. This Agreement shall be construed under and governed by the laws of the State of Colorado.

G. Integration; Amendment. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and there are no oral or collateral agreements or understandings. The Parties agree that this Agreement may be amended only by an instrument in writing signed by the City and the Developer, and successors and permitted assigns of the Developer to whom the Developer has granted in writing the right to consent to any such amendments.

H. Jurisdiction and Venue. The Parties, on behalf of themselves and their successors and assigns, stipulate and agree that in the event of any dispute arising out of this Agreement, the courts of the State of Colorado shall have exclusive jurisdiction over such dispute and venue shall only be proper in Larimer County, Colorado. The Parties hereby submit themselves to jurisdiction of the State District Court, 8<sup>th</sup> Judicial District, County of Larimer, State of Colorado.

I. Multiple-Fiscal Year Obligations. To the extent that any of the obligations of the City contained in this Agreement are or should be considered multiple-fiscal year obligations under TABOR or the City's Charter or Code, such obligations shall be subject to annual appropriation by the Council, in its sole discretion.

J. No Joint Venture or Partnership. No form of joint venture or partnership exists between the Developer and the City, and nothing contained in this Agreement shall be construed as making the Developer and the City joint venturers or partners.

K. No Third-Party Beneficiaries. Except as otherwise provided in this Agreement, enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City, the Developer and its successors and assigns, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. Except as otherwise provided in this Agreement, it is the express intention of the City, the Developer and its successors and assigns that any other person receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

L. Notices. Any notice or communication required under this Agreement between the City and Developer must be in writing and may be given either personally, by registered or certified mail, return receipt requested, by Federal Express or other reliable courier service that guarantees next day delivery or by facsimile transmission (followed by an identical hard copy via registered or certified mail). If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by any other method, a notice shall be deemed to have been given and received on the first to occur of: (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (b) as applicable: (i) three (3) days after a registered or certified letter, return receipt requested, containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail; (ii) the following business day after being sent via Federal Express or other reliable courier service that guarantees next day delivery; or (iii) the following business day after being sent by facsimile transmission (provided that such facsimile transmission is promptly followed by an identical hard copy sent via registered or certified mail, return receipt requested). Any party hereto may at any

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time, by giving written notice to the other party hereto as provided in this Section II.L, designate additional persons to whom notices or communications shall be given and designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:	City of Fort Collins ATTN: City Manager 300 LaPorte Avenue Fort Collins, CO 80521 Email: _____
With a copy to:	City of Fort Collins ATTN: City Attorney 300 LaPorte Avenue Fort Collins, CO 80521 Email: _____
If to Developer:	MXD Fort Collins, LLC c/o McWhinney Real Estate Services, LLC ATTN: Will Little 1800 Wazee Street, Suite 200 Denver, CO 80202 Email: will.little@mcwhinney.com
With copies to:	McWhinney Real Estate Services, LLC ATTN: Legal Department 1800 Wazee Street, Suite 200 Denver, CO 80202 Email: legalnotices@mcwhinney.com  Brownstein Hyatt Farber Schreck, LLP ATTN: Carolynne White & Abby Kirkbride 675 15th Street, Suite 2900 Denver, CO 80202 Email: Cwhite@bhfs.com; Akirkbride@bhfs.com

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M. Recording. The City shall record this Agreement with the Larimer County Clerk and Recorder, and the Developer shall pay the cost of the same.

N. Section Captions. The captions of the sections 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.

O. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force.

P. Survival. The covenants, representations and warranties and agreements to be performed or complied with under this Agreement by the respective Parties shall be continuing obligations of the respective Parties until fully complied with or performed, respectively.

Q. Waiver. No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

R. Effective Date and Termination. This Agreement shall become effective on the date that City Council Resolution 2025-059, approving the Service Plan Amendment, takes effect.

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

**CITY:**

CITY OF FORT COLLINS, COLORADO,  
a Municipal Corporation

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_, 2025

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Senior Assistant City Attorney

STATE OF COLORADO     )  
  ) ss  
COUNTY OF LARIMER    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_ as Mayor of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires:

\_\_\_\_\_  
Notary Public

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**DEVELOPER:**

**MXD FORT COLLINS, LLC,**  
a Delaware limited liability company

By: MXD Fort Collins Partners, LLC,  
a Delaware limited liability company,  
its Manager

By: McWhinney Real Estate Services, Inc.,  
a Colorado limited liability company,  
its Manager

By: \_\_\_\_\_

STATE OF COLORADO    )  
  )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_ as \_\_\_\_\_ of McWhinney Real Estate Services, Inc., a Colorado limited liability company, as Manager of MXD Fort Collins Partners, LLC, a Delaware limited liability company, as Manager of MXD Fort Collins, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



# EXHIBIT A TO RESOLUTION 2025-060

## Exhibit A

### Description of the Property

#### Parcel A:

Lots 12, 13, 15, 16 and 17, Foothills Mall Redevelopment Subdivision, recorded June 4, 2014 at Reception No. 20140028776, County of Larimer, State of Colorado.

#### For Informational Purposes Only

Tax ID No.:	9725330012	Lot 12
	9725330013	Lot 13
	9725330015	Lot 15
	9725330016	Lot 16
	9725330017	Lot 17

#### And

Lots 11, 18 and 19, Foothills Mall Redevelopment Subdivision Filing No. 2, recorded April 8, 2015 at Reception No. 20150020510, County of Larimer, State of Colorado.

#### For Informational Purposes Only

Tax ID No.:	9725332011	Lot 11
	9725332018	Lot 18
	9725332019	Lot 19

#### And

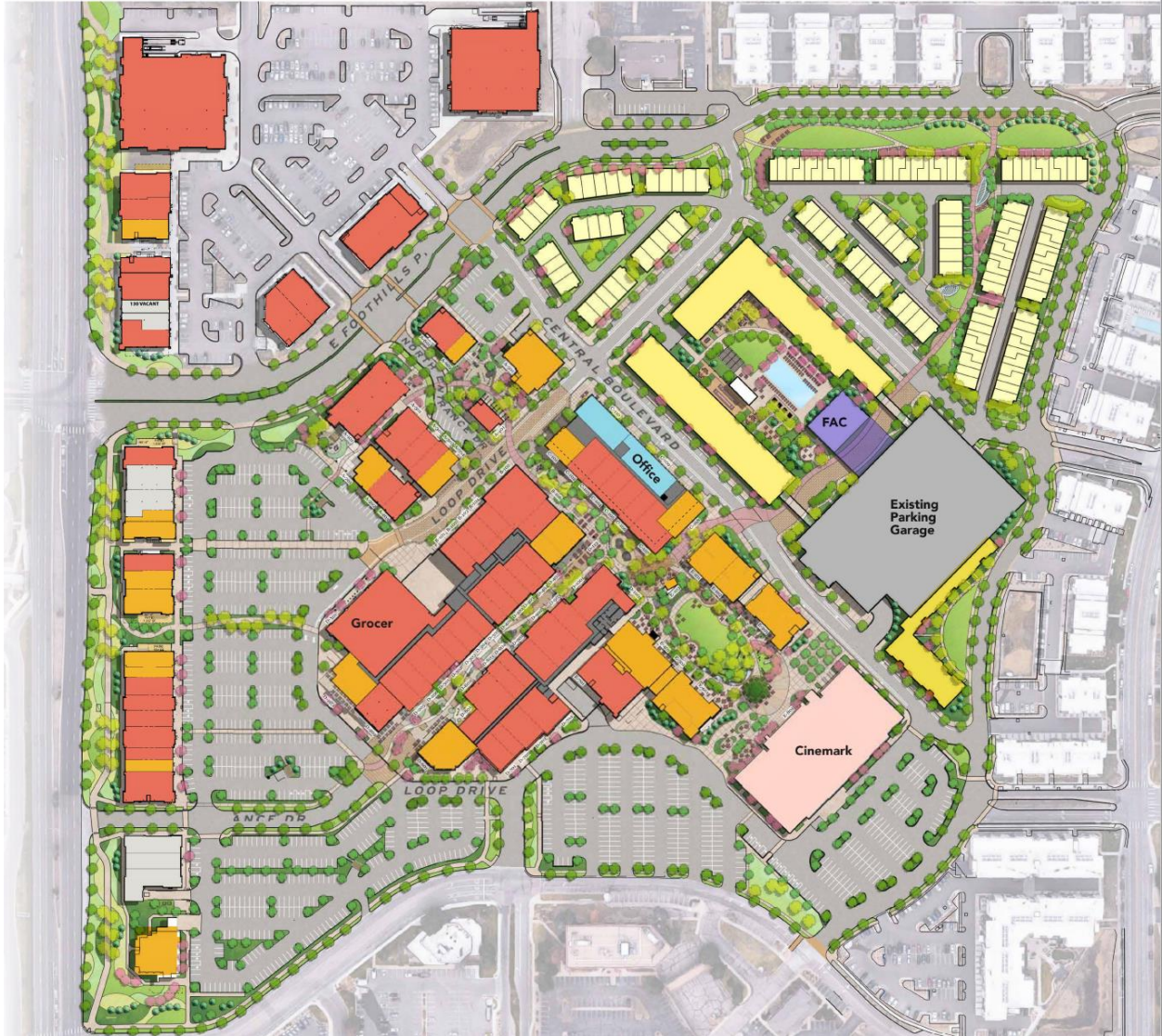
Lots 1, 2, 7, 9, 10, 14A, 14B, 21 and 22, Foothills Mall Redevelopment Subdivision Filing No. 3, recorded October 12, 2020 at Reception No. 20200083502, County of Larimer, State of Colorado.

#### For Informational Purposes Only

Tax ID No:	9725335001	Lot 1
	9725335002	Lot 2
	9725335007	Lot 7
	9725335009	Lot 9
	9725335010	Lot 10
	9725335014	Lot 14A
	9725335015	Lot 14B
	9725335021	Lot 21
	9725335022	Lot 22

**Exhibit B**

**Preliminary Redevelopment Site Plan – Foothills Mall**





**Exhibit C**

**Affordable Housing Parcel – Foothills Mall**

