EXHIBIT A

REDEVELOPMENT AGREEMENT
(1024 8th Avenue)

This REDEVELOPMENT AGREEMENT (this "**Agreement**") dated as of March 23, 2023 ("**Effective Date**"), is made by and among 1024 8TH AVENUE, LLC, a Delaware limited liability company ("**Developer**"), the CITY OF GREELEY, a municipal corporation ("**City**"), and the GREELEY DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic of the State of Colorado ("**Authority**"). Developer, City, and Authority are sometimes collectively called the "**Parties**," and individually, a "**Party**."

RECITALS

WHEREAS, Developer is under contract to purchase real property situated at 1024 8th Avenue in Greeley, CO 80631, as described and depicted in Exhibit A attached hereto ("**Property**"); and

WHEREAS, the Property is located within the boundaries of the Downtown Development Authority District (the "**DDA District**"), which is managed by the Authority; and

WHEREAS, the formation of the DDA District also included the establishment of tax increment financing, which provides a financial tool as authorized under state law to stimulate and support certain redevelopment activities; and

WHEREAS, commensurate with the formation of the DDA District, a Plan of Development ("**Plan of Development**") encompassing the legal boundaries of the Authority was adopted by the Greeley City Council with Resolution No. 63, 2002 on November 19, 2002, and later revised and readopted by the Greeley City Council with Resolution No. 64, 2009 on August 18, 2009; and

WHEREAS, the Authority may extend financial support from its tax increment district to secure the development of the Project; and

WHEREAS, consistent with the City's Comprehensive Plan, the City has established and adopted a physical area within the community known as the Redevelopment District ("**Redevelopment District**"), within which it has identified property conditions that warrant support to stimulate reinvestment to deter properties from economic and physical deterioration due to their age and condition; and

WHEREAS, with the establishment and adoption of the Redevelopment District, the City Council made findings that establishment of the Redevelopment District would promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; will halt or prevent deterioration of property values or structures within the Redevelopment District, will halt or prevent the growth of blighted areas within the Redevelopment District, and will assist the City in the development and redevelopment of the Redevelopment District and in the overall planning to restore or provide for the continuance of the health thereof; and that it would be of especial benefit to the property within the boundaries of the Redevelopment District, and by making such findings authorized the City to incur obligations, and to pledge as security

therefor the tax increments consistent with the provisions of §§ 31-25-801 through -822, C.R.S.; and

WHEREAS, the Redevelopment District incorporates within its boundary the entirety of the DDA District; and

WHEREAS, the Property is also located within the Redevelopment District; and

WHEREAS, Developer intends to redevelop the Property as a mixed-use multi-family residential and incidental retail project, which may also include office, restaurant, bar, and accessory uses, together with related amenities and uses on the Property (collectively, the "**Project**"); and

WHEREAS, construction of the Project is consistent with the adopted Plan of Development and, as such, will reduce conditions of distress or disinvestment in the DDA District; maximize the efficient provision of infrastructure and public services throughout the DDA District; and will assure the availability of housing, goods and services to area residents and businesses; and

WHEREAS, the City has established a limited fund for use within the Redevelopment District to support eligible redevelopment activities by paying for a portion of certain City development fees and charges associated with redevelopment construction, defined herein as the "**Redevelopment Assistance Fund;**" and

WHEREAS, as evidenced by Exhibits B and C, the Project complies with City design and development standards, is consistent with the goals of the Plan of Development, the City's Comprehensive Plan, and meets the eligibility criteria of the City's Redevelopment District incentive program; and

WHEREAS, the City has determined that the Property as defined herein, and as proposed for development as a single development, has met the City's raw water requirement; and

WHEREAS, the Authority has determined that the acquisition, construction and installation of the Project will serve a public purpose and contribute to the redevelopment of the DDA District as contemplated by the Plan of Development.

NOW, THEREFORE, the Parties hereto, for themselves, their successors and assigns, in and for valuable consideration, including but not limited to, the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, do hereby covenant and agree as follows:

DEFINITIONS

1. **"Accumulated Tax Increments"** means an amount equal to $500,000, which is on deposit in the Special Fund, as of the date of this Agreement.

2. **"Act"** means Part 8 of Article 25 of Title 31, Colorado Revised Statutes.

3. **"Ballot Question"** means the following ballot question approved by a majority of the electors voting thereon at an election duly called and held in the DDA District on November 4, 2008:

> "SHALL CITY OF GREELEY DEBT BE INCREASED $50,000,000.00 (MAXIMUM PRINCIPAL AMOUNT) WITH A REPAYMENT COST OF $102,000,000.00 (MAXIMUM TOTAL PRINCIPAL AND INTEREST COSTS), ALL FOR THE PURPOSE OF FINANCING THE OBJECTS AND PURPOSES CONTAINED IN THE GREELEY DOWNTOWN DEVELOPMENT AUTHORITY'S PLAN OF DEVELOPMENT AS SUCH PLAN MAY BE AMENDED FROM TIME TO TIME ("THE PROJECT"), INCLUDING EQUIPMENT, APPURTENANCES, AND ACQUISITION OF INTEREST IN LANDS FOR SUCH PROJECT, AND INCLUDING RESERVED FUNDS AND OTHER INCIDENTAL COSTS NECESSARY OR APPROPRIATE IN CONNECTION WITH SUCH PROJECT AND FINANCING, ALL AS PROVIDED IN THE AUTHORITY'S APPROVED PLAN OF DEVELOPMENT AND ANY APPROVED AMENDMENTS TO THE AUTHORITY'S PLAN OF DEVELOPMENT; SUCH DEBT TO BE EVIDENCED BY BONDS, NOTES, LOAN AGREEMENTS, REIMBURSEMENT AGREEMENTS OR LEASES WHICH MAY BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF EIGHT PERCENT (8%) PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE CITY COUNCIL, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE CITY COUNCIL MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM OF NOT MORE THAN 3%, AND WHICH DEBT MAY BE REFINANCED AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF THE MAXIMUM NET EFFECTIVE INTEREST RATE WITHOUT ADDITIONAL VOTER APPROVAL; SUCH DEBT SHALL BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE AUTHORITY, INCLUDING THE REVENUES PLEDGED OR FROM TAXES PLEDGED PURSUANT TO SECTION 31-25-807(3)(B) COLORADO REVISED STATUTES OR BOTH SUCH REVENUES AND TAXES WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE BOARD OF THE AUTHORITY AND THE CITY COUNCIL; AND SHALL THE CITY BE AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IN THIS QUESTION, PROVIDED THAT AFTER THE ISSUANCE OF SUCH REFUNDING DEBT THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF ALL DEBT ISSUED PURSUANT TO THIS QUESTION DOES NOT EXCEED THE MAXIMUM PRINCIPAL AMOUNT SET FORTH ABOVE, AND PROVIDED FURTHER THAT ALL DEBT ISSUED BY THE CITY PURSUANT TO THIS QUESTION IS ISSUED ON TERMS THAT DO NOT EXCEED THE REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, THE CHARTER OF THE CITY OF GREELEY OR ANY OTHER LAW AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE AUTHORITY AND THE CITY OF GREELEY?"

4. "**Cap Amount**" means $3,100,000, which is the maximum amount of Eligible Development Expenses that the City shall be required to pay under this Agreement.

5. "**Certification of Eligible DDA Costs"** means the Certificate prepared and executed by the Developer after Completion of the Project that sets forth the total amount of Eligible DDA Costs incurred and paid by the Developer in connection with the design, acquisition, construction and installation of the Eligible DDA Improvements, as required pursuant to Section 2.B. hereof.

6. "**City's Portion**" means the amount of the Eligible Development Expenses that the City will underwrite, conditioned upon Developer's performance of its obligations pursuant to this Agreement.

7. "**Commence**" or "**Commencement**" means the beginning of on-site physical construction of the Project, including without limitation excavation or grading, but expressly not including demolition of existing structures.

8. "**Completion**" or "**Completed**" means issuance of temporary or final certificates of occupancy for all buildings within the Project.

9. "**Conceptual Elevations**" means Developer's current conceptual elevations for the buildings comprising the Project as depicted on Exhibit C of this Agreement.

10. "**Design Standards**" refers to the description of required building and site design elements as described in Exhibit B of this Agreement, as modified pursuant to Paragraph 23.

11. "**Developer's Portion**" means the Eligible Development Expenses, less the City's Portion, that the Developer is required to pay pursuant to this Agreement.

12. **"District"** means the Downtown Development Authority District.

13. "**Eligible DDA Costs"** means the reasonable and customary expenditures for the design, acquisition, construction and installation of the Eligible DDA Improvements, including without limitation, reasonable and customary soft costs and expenses related to the design, acquisition, construction and installation of the Eligible DDA Improvements, subject to the Increment Cap and the limitations contained herein.

14. "**Eligible Development Expenses**" means all impact fees, development review fees, fees imposed as a condition to the issuance of a City permit, tap fees, and sales and use tax related to the Project, but not incidental construction activity such as permits related to work in the right-of-way.

15. **"Eligible DDA Improvements"** means, collectively, the improvements described in Exhibit D, as it may be amended from time to time in accordance with this Agreement, that are to be designed, acquired, constructed or installed by the Developer as part of the Project, and that the Authority has determined have a public benefit in furtherance of the Act and the Plan of Development. Exhibit D may be amended with the prior written consent of the Executive Director of the Authority.

16. "**Increment Cap**" means the Accumulated Tax Increments and the maximum amount of revenues from the Property Tax Increment Revenue that shall be paid to the Developer under this Agreement to reimburse Eligible DDA Costs, which shall be the lesser of (a) the actual Eligible DDA Costs incurred in connection with the Project, as set forth in the Certification of Eligible DDA Costs, or (b) $1,700,000.

17. **"O&M Mill Levy"** means the levy of an ad valorem tax by the City at the rate of five mills on the real and personal property within the boundaries of the DDA District to be used for the purpose of paying the Authority's operations, maintenance and other expenses, as allowed by Section 31-25-817 of the Act.

18. **"Plan of Development"** means the Plan of Development originally approved by the City Council of the City on November 19, 2002, and modified by resolution adopted August 18, 2009 with respect to the DDA District.

19. "**Project"** means a residential project, featuring multi-family residential units and, together with related amenities and uses on the Property.

20. "**Project Costs**" means the costs for construction of the Project set forth on the Developer's building permit applications, as reconciled at the time of Completion in accordance with § 4.04.255(b) of the Greeley Municipal Code.

21. "**Property**" means certain real property within the downtown area of the City described in Exhibit A hereto.

22. "**Property Tax Base Amount**" means, for purposes of this Agreement, $493,440, which is the total assessed value of the Property last certified prior to the effective date of this Agreement, as reasonably determined by the Authority based upon data provided by the County Assessor. The Property Tax Base Amount and increment value shall be calculated and adjusted from time to time by the Authority in accordance with § 31-25-807(3)(e), C.R.S., and the rules and regulations of the Property Tax Administrator of the State of Colorado. The determination by the Authority of the Property Tax Base Amount and the increment value shall be conclusive absent manifest error.

23. "**Property Tax Increment Revenue**" means the annual ad valorem property tax revenue received from the Weld County Treasurer for the Property in excess of the amount produced by the levy of those taxing bodies that levy property taxes against the Property Tax Base Amount in accordance with the Act and the regulations of the Property Tax Administrator of the State of Colorado, and credited to the Special Fund, but not including, (a) the O&M Mill Levy, (b) any offsets collected by the Weld County Treasurer for return of overpayments or any reserve funds retained by the City or the Authority for such purposes in accordance with the Act, (c) any collection fees lawfully retained or payable to the City or Weld County for services rendered in connection with the collection of such ad valorem taxes, and (d) the Accumulated Tax Increments.

24. "**Redevelopment Assistance Fund**" means a fund of City monies that has been established and dedicated to provide assistance for the development or improvement of property within the DDA District. The Redevelopment Assistance Fund, which may be replenished from time to time, contains sufficient monies to pay the amount to which the Developer is entitled under this Agreement.

25. "**Special Fund**" means the special fund of the City that has the Accumulated Tax Increments on deposit and into which the Property Tax Increment Revenues are deposited as further set forth in § 31-25-807(3)(a)(II), C.R.S.

AGREEMENT

1. Eligible Development Expenses:

A. Payment of all Eligible Development Expenses shall be deferred until Completion of the Project, or such other time according to the terms of this Agreement, at which time the City shall pay the City's Portion and the Developer shall pay the Developer's Portion to the recipients of such Eligible Development Expenses, in accordance with the terms and conditions set forth in this Paragraph 1.

B. At the time Developer obtains each building permit for the Project, Developer shall provide the City with a guaranty, cash escrow, letter of credit, or other security for the payment of all Eligible Development Expenses that would be due (but for the deferment set forth in Paragraph 1(A)) as a condition to issuing such building permit ("**Security**").

i. If Developer does not pay the entire Developer's Portion when due in accordance with this Agreement, the City shall send Developer written notice thereof ("**Nonpayment Notice**"). If Developer does not cure such failure within 10 business days after receipt of such Nonpayment Notice, then the City may collect upon the Security in an amount equal to the past due amount of Developer's Portion, which shall be the City's sole and exclusive remedy for such failure.

ii. If the Project is Commenced but Developer ceases work on the Project for more than 120 consecutive calendar days (subject to Force Majeure Events) and the Project is not then Completed, the City shall send the Developer written notice thereof ("**Cessation Notice**"). If Developer does not recommence construction of the Project within 30 calendar days after receipt of such Cessation Notice, then the Developer's Portion shall be deemed to be 100% of the Eligible Development Expenses for the Project, and the City may collect upon the Security in an amount equal to the past due amount of Developer's Portion, which shall be the City's sole and exclusive remedy for such failure.

iii. Upon payment of the entire Developer's Portion for the Project, the Security shall be automatically and forever released and, if applicable, all funds remaining in the Security shall be immediately paid to Developer. The Authority

shall have no right in or to the Security or to bring or join any claims against Developer for failure to pay the Eligible Development Expenses.

C. The City's obligation to pay the City's Portion shall be contingent upon satisfaction of the following conditions:

i. Developer must Commence the Project within 18 calendar months after the Effective Date ("**Commencement Deadline**"), and the Project must be Completed within 28 calendar months after the date of Commencement ("**Completion Deadline**"). Developer may request an extension of either the Commencement Deadline or the Completion Deadline by delivering a written request for the same to the City Manager, which extension may be granted in the City's discretion, which discretion will not be unreasonably withheld.

ii. Developer shall have Completed the Project in substantial compliance with the Design Standards. The City's issuance of a Building Permit shall be deemed conclusive evidence that the proposed design is in compliance with this requirement. Once a Certificate of Occupancy has been issued, the Developer shall be deemed to have complied with this requirement in its entirety.

D. Provided Developer has satisfied the conditions set forth in Paragraph 1(D), the City shall pay the City's Portion out of the Redevelopment Assistance Fund, according to the following schedule:

i. If the Project Costs exceed $5,000,000, the City's portion will equal 25% of the Eligible Development Expenses.

ii. If the Project Costs exceed $10,000,000, the City's Portion will equal 50% of the Eligible Development Expenses.

iii. If the Project Costs exceed $20,000,000, the City's Portion will equal 75% of the Eligible Development Expenses.

iv. If the Project Costs exceed $30,000,000, the City's Portion will equal 100% of the Eligible Development Expenses.

v. The percentage of the City's Portion shall not increase proportionately for any increment between the dollar amounts set forth in the prior subparagraphs 1.D(i) through (iv).

vi. Notwithstanding the foregoing, the City shall not be obligated to pay any Eligible Development Expenses in excess of the Cap Amount.

E. Upon Completion, Developer shall submit a reconciliation of Project Costs and, subject to final resolution of any contests of such amount, shall provide written notice

to the City (a "**Completion Notice**") stating the City's Portion and the total Project Costs, which shall be equal to the total Project Costs as resulting from such reconciliation process.

F. Within 30 calendar days after delivery of the Completion Notice, the City shall pay the City's Portion out of the Redevelopment Assistance Fund, which the City represents and warrants to Developer contains and shall contain at all times prior to the City's payment of the City's Portion funds sufficient to pay the City's Portion up to the Cap Amount as required by this Agreement.

G. The Developer's Portion shall equal the total Eligible Development Expenses less the City's Portion. Developer shall pay the Developer's Portion within 30 calendar days after delivery of the Completion Notice to the City.

2. Property Tax Increment Revenue.

A. The City has established the Special Fund and shall deposit the Property Tax Increment Revenues into the Special Fund upon receipt. The Parties acknowledge that incremental property taxes that are remitted to the City for deposit in the Special Fund are based on the annual valuation of all properties located within the DDA District, and not on a parcel by parcel basis. Therefore, tax increment revenues are calculated and remitted to the City in the aggregate for the entire District and are not remitted on a parcel by parcel basis. The Authority agrees that it will establish a reasonable methodology for determining the amount of tax increment revenues on deposit in the Special Fund that are allocable to the Property.

B. Upon Completion of the Project, the Developer shall prepare a Certification of Eligible DDA Costs that sets forth the Eligible DDA Costs that were actually incurred and paid by the Developer in connection with the design, acquisition, construction and installation of the Eligible DDA Improvements (the **"Certification of Eligible DDA Costs"**). The Certification of Eligible DDA Costs shall be executed by an authorized representative of the Developer and provided to the City and the Authority, together with bills or statements of account for the Eligible DDA Costs incurred and paid by the Developer.

C. After Completion of the Project and receipt of the Certification of Eligible DDA Costs, the City shall reimburse the Developer for Eligible DDA Costs from Accumulated Tax Increments and Property Tax Increment Revenues on deposit in the Special Fund, in an aggregate amount not exceeding the Increment Cap, in accordance with the following provisions. After Completion and receipt of the Certification of Eligible DDA Costs, the City shall remit the Accumulated Tax Increments to reimburse the Developer for Eligible DDA Costs, subject to the Increment Cap. No later than December 1 in each calendar year, the City and the Authority shall determine the amount of Property Tax Increment Revenues that are on deposit in the Special Fund that are attributable to the Property. The amount of Property Tax Increment Revenues on deposit in the Special Fund shall not include interest, if any, earned on such Revenues. On or prior to December 15 of each calendar year, the City shall remit the Property Tax Increment Revenues on deposit in the Special Fund that are attributable to the Property to the Developer to reimburse the

Developer for Eligible DDA Costs, subject to the Increment Cap. The City's obligation to remit the Accumulated Tax Increments and Property Tax Increment Revenues to the Developer to reimburse the Developer for Eligible DDA Costs is being entered into by the City pursuant to the authority conferred by the Ballot Question.

D. Notwithstanding the foregoing or any provision to the contrary contained in this Agreement, in the event that the Project is not Completed in accordance with the terms and provisions of this Agreement, or in the event that the conditions set forth in Paragraph 1(C) are not complied with by the Developer, the City shall have no obligation to remit the Accumulated Tax Increments or any Property Tax Increment Revenues to the Developer. The obligation to reimburse the Developer for Eligible DDA Costs shall not exceed the Increment Cap and shall terminate upon expiration of the tax increment period established by the Plan of Development and set forth in the Act, and not including any extension of the 30-year tax increment period as set forth in Section 31-25-807(3)(a)(iv) of the Act.

E. The Developer agrees that the Accumulated Tax Increments and all Property Tax Increment Revenues that it receives from the City shall be applied solely to the reimbursement of Eligible DDA Costs that have been certified to the City and the Authority pursuant to the Certification of Eligible DDA Costs. The estimated Eligible DDA Costs that are expected to be incurred in connection with the Project are set forth in Exhibit D. The costs for individual line items may increase or decrease provided that the total reimbursement for Eligible DDA Costs shall not exceed the Increment Cap. Upon request by the City or the Authority, the Developer shall provide documentation to the City or the Authority evidencing the application of the Accumulated Tax Increments and Property Tax Increment Revenues to the reimbursement of Eligible DDA Costs.

F. The Developer acknowledges that incremental property taxes are remitted to the City in accordance with the policies and procedures adopted by the State Property Tax Administrator, the Weld County Assessor's Office and the Weld County Treasurer's office, and accordingly the timing and payment of the Property Tax Increment Revenues is not within the control of the City or the Authority. Nothing herein shall be construed as a promise or a guarantee by the City or the Authority that the Property Tax Increment Revenues will be collected and remitted to the City for deposit in the Special Fund in any projected or anticipated amount. The Developer acknowledges that the Property Tax Administrator for the State of Colorado and the Weld County Assessor may modify the process for calculating property tax increments, which may reduce the amount of Property Tax Increment Revenues. In addition, the Developer acknowledges that the generation of Property Tax Increment Revenues is significantly dependent upon completion of development of the Project and the Developer acknowledges and agrees that neither the City nor the Authority is responsible for the amount of Property Tax Increment Revenues that will be generated, and the Developer agrees to assume the risk that the amount of Property Tax Increment Revenues that are generated may be insufficient to reimburse Eligible DDA Costs up to the Increment Cap.

G. The City shall keep proper and current itemized records, books, and accounts in which complete and accurate entries will be made of the receipt and use of the Property Tax Increment Revenues deposited in the Special Fund and such other

calculations required by this Agreement or any applicable law or regulation. The City shall prepare, after the close of each fiscal year, a complete financial statement prepared in accordance with generally accepted accounting principles accepted in the United States of America for such year in reasonable detail covering the above information, and if required by statute, certified by a public accountant, and, upon written request, will furnish a copy of such statement to the other Parties within 90 calendar days after the close of each fiscal year. Pursuant to Section 5-11 of the Greeley City Charter, the fiscal year of the City Government shall begin the first day of January in each year and end on the last day of the succeeding December.

H. The Authority shall not enter into any agreement or transaction that impairs the rights of the Parties under this Agreement or prohibits or restricts the Authority's performance of any of its obligations under this Agreement.

I. The Authority has determined that the acquisition, construction and installation of the Project will serve a public purpose and contribute to the redevelopment of the DDA District as contemplated by the Plan of Development.

3. Terms and Conditions of Agreement, Default: In the event a Party fails or refuses to perform according to the terms of this Agreement, that Party shall be declared in default. In the event of a default, the defaulting Party is permitted thirty (30) calendar days to cure said default after receipt of Notice consistent with this Agreement. In the event a default remains uncured after the 30-day period, the Party declaring default may:

A. Terminate the Agreement; or

B. Bring an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus (including without limitation to enforce all obligations to pay all amounts due or owing hereunder).

The foregoing remedies shall be cumulative and shall be the sole and exclusive remedies for a default of this Agreement, and all other remedies are hereby waived. In the event the default causes the other Party not in default to commence legal or equitable action against the defaulting Party, the defaulting Party will be liable to the non-defaulting Party for the costs incurred by reason of the default, including reasonable attorneys' fees and costs. No Party shall be entitled to recover or claim damages for an event of default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, exemplary or punitive damages for any other Party's breach of this Agreement.

4. No Obligation to Construct.

A. Notwithstanding anything to the contrary in this Agreement: (a) Developer shall have no obligation to construct all or any portion of the Project, to construct the Project in accordance with the Design Standards, or to timely Commence or Complete the Project; and (b) Developer may, in its sole discretion, elect to undertake none, all, or only certain phases of the Project, to construct the Project other than as described in the Design

Standards, and to Commence and Complete the Project on a timeline determined by Developer.

B. If Developer does not satisfy the conditions in Paragraph 1(C), the City's Portion shall be zero and the Developer's Portion shall be 100% of the Eligible Development Expenses.

5. No Waiver of Greeley Municipal Code: Except for the express incentives offered by the City as stated herein, this Agreement does not waive any part or provision of the Greeley Municipal Code.

6. Governmental Immunity: The Parties agree that the City and the Authority, in entering this Agreement, do not waive governmental immunity as described in C.R.S. 24-10-101, *et seq*. No part of this Agreement shall be deemed to create a waiver of immunity as defined therein.

7. Service of Notices: All notices required or permitted pursuant to this Agreement must be made in writing and delivered in person, by prepaid overnight express mail or overnight courier service, or by certified mail or registered mail, postage prepaid return receipt requested, to the other Parties' authorized representatives (or their successors) as identified herein at the addresses listed below. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice is affirmatively refused or cannot be delivered during customary business hours by reason of (a) the absence of a signatory to acknowledge receipt, or (b) a change of address with respect to which the addressor had neither actual knowledge nor written notice delivered in accordance with this section, then the first attempted delivery shall be deemed to constitute delivery.

For the City:

Raymond C. Lee III
City Manager
City of Greeley
1000 10th Street
Greeley, Colorado 80631

With copy to:

City Attorney
1100 10th Street, Suite 401
Greeley, Colorado 80631

For the Authority:

Greeley Downtown Development Authority
802 9th Street, Suite 100
Greeley, Colorado 80631
Attention: Bianca Fisher, Executive Director
Telephone: (970) 356-6775

Email: bianca@greeleydowntown.com

For Developer:

1024 8th Avenue, LLC
210 West 19th Terrace, Suite 150
Kansas City, MO 64112
Attn: Tadd Miller, CEO

8. Severability: If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and of this Agreement will remain enforceable to the fullest extent permitted by law.

9. Venue and Governing Law: This Agreement shall be governed by and construed according to the laws of the State of Colorado. Venue for all actions regarding this Agreement shall be in Weld County, Colorado.

10. Assignment:

A. The City, Developer, and Authority shall not assign any rights or obligations under this Agreement without the written consent of the other Parties except as follows.

B. Prior to Completion, Developer may assign, pledge, collaterally assign, or otherwise encumber all or any part of this Agreement, including without limitation its right to receive any payment or reimbursement, without any Party's consent, but after written notice to the City and the Executive Director of Authority containing the name and address of the assignee, to: (a) any lender or other party that provides acquisition, construction, working capital, tenant improvement, or other financing to Developer in connection with the Project or acquisition or ownership of the Property; or (b) one or more subsidiaries, parent companies, special purpose entities, affiliates controlled by or under common control or ownership with Developer, or joint venture entities formed by Developer or with its investors or partners to develop, own, and/or operate all or a portion of the Property or of the improvements to be constructed thereon (each assignee in (a) and (b) being a "**Permitted Assignee**").

C. After Completion, Developer shall have the right to assign all or any portion of this agreement to a purchaser of all or a portion of the Property without the written consent of the other parties, but shall provide written notice to the City and the Executive Director of the Authority containing the name and address of the assignee within 5 business days of such conveyance and assignment.

D. If consent is required, it shall not be unreasonably withheld, delayed or conditioned.

E. The restrictions on assignment contained in this Agreement apply only to a potential assignment of all or a portion of the rights and obligations pursuant to this

Agreement, and shall not be interpreted to restrict in any way the conveyance of one or more interests in all or a portion of the Property.

F. Nothing in this Agreement modifies or waives the obligations or responsibilities of either Developer or Developer's assignee under the Greeley Development Code.

G. No assignment of this Agreement by Developer, whether or not such assignment requires the consent of the City or the Authority, shall relieve Developer of its personal and primary obligations contained within this Agreement. Any purported assignment that does not comply with this provision is void. This Agreement is binding and inures to the benefit of the parties and their respective permitted successors and assigns, subject to this Paragraph 10.

11. No Third Party Beneficiaries: It is expressly understood and agreed that the terms and enforcement of the terms of this Agreement, and all rights of action relating to enforcement, are strictly reserved to the Parties. Nothing in this Agreement shall give or allow any claim or cause of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned Parties that no person or entity, other than the Parties hereto, receiving services or benefits under this Agreement shall be deemed any more than an incidental beneficiary only.

12. Modifications and Amendments: This Agreement shall not be modified, revoked, or amended except by written agreement signed by all Parties.

13. Counterparts: This Agreement may be executed in counterpart originals, each of which shall be deemed an original, and each of which shall be deemed to constitute one and the same Agreement. Additionally, a copy of an executed original Agreement signed by a Party hereto and transmitted by electronic mail shall be deemed an original, and any Party hereto is entitled to rely on the validity, authenticity, and authority of an original transmitted by electronic mail.

14. Nonliability of Officials, Agents, Members, and Employees. Except for willful or wanton actions, no trustee, board member, commissioner, official, employee, consultant, manager, member, shareholder, attorney or agent of any Party, will be personally liable under this Agreement, or in the event of any default, or for any amount that may become due to any Party.

15. Cooperation Regarding Defense. In the event of any litigation or other legal challenge involving this Agreement or the ability of any Party to enter into this Agreement that is not brought by a Party, the Parties will cooperate and jointly defend against such action or challenge, to the extent permitted by law.

16. Additional Documents or Actions. The Parties agree to execute any reasonable additional documents or take any reasonable additional action, including but not limited to estoppel certificates requested or required by lenders or purchasers of the Property, that are: (a) reasonably necessary to carry out this Agreement, (b) reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement or the status of the Agreement and the Parties'

actions hereunder, or (c) are reasonably necessary to effectuate the agreements and the intent of this Agreement. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement, are asserted or determined to be invalid, illegal, or are otherwise precluded, the Parties will use reasonable, diligent, good faith efforts to amend, reform, or replace such invalid, illegal, or precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

17. Waiver of Breach. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

18. Binding Effect; Entire Agreement. This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph permits the assignment of this Agreement except as set forth in Paragraph 10. This Agreement represents the entire Agreement among the Parties with respect to the subject matter hereof and supersedes any prior written or oral agreements or understandings with regard to the subject matter of this Agreement.

19. Days. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S., such day will be extended until the next day that is not one of the foregoing days.

20. Recording. No Party shall record this Agreement or any memorandum of this Agreement in the real property records of Weld County, Colorado.

21. 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, or capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

22. Parties Not Partners. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

23. Force Majeure If a Force Majeure Event occurs, the deadline for performance of any obligations affected by such Force Majeure Event shall be automatically extended for a period equal to the duration of such Force Majeure Event and Developer shall be excused from the performance of such obligations during such period. “Force Majeure Event” means any one or more of the following events or circumstances that, alone or in combination, directly or indirectly, adversely affects the Developer’s performance of an obligation pursuant to this Agreement: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions or shortages; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of Nature; disruption to local, national, or international transport services; prolonged shortages of materials or equipment, epidemics; severe adverse weather; the discovery of previously unknown facilities, improvements,

or other features or characteristics of the Property; delays in the demolition of existing structures, including without limitation delays related to the remediation or removal of asbestos or other hazardous materials; or negotiation or approval of entitlements, permits, or agreements related to the Project, beyond the reasonable and foreseeable period of time necessary for the review of such applications for entitlements, permits or agreements; Material Litigation; and any other event, similar or dissimilar to the above, whether foreseeable or unforeseeable, known or unknown, that is beyond the Developer's reasonable control. "**Material Litigation"** includes litigation, appeals, and administrative actions related to the entitlement, permitting, development, financing, or construction of the Project, including without limitation claims brought pursuant to C.R.C.P. § 106(a)(4) to the extent not initiated by the Developer, and any litigation brought by Developer against the City, Authority, or both arising out of or related to this Agreement or performance of the obligations set forth herein, but only if such litigation, appeal, or administrative action delays development of the Project for a period of more than five consecutive business days.

24. Design Standards.

A. The parties agree that the Conceptual Elevations comply with the Design Standards and that if Developer develops the Project in accordance with the Conceptual Elevations, Developer shall be deemed to have satisfied the condition in Paragraph 1(B)(ii).

B. Developer shall have the right to modify the Design Standards from time to time in its sole discretion provided that such modifications are approved in writing by the City Manager. If Developer desires to obtain the approval of the City Manager, Developer shall deliver a written request to the City Manager describing or depicting the desired modification. The City Manager shall have 10 business days to review and either approve or disapprove of the requested modification in writing, such approval not to be unreasonably withheld, conditioned, or delayed; provided that if the City Manager disapproves of the requested modification in writing, it shall describe the basis for its disapproval in the written notice to Developer in reasonable detail; provided further, that the City Manager shall only have the right to disapprove of such requested modification if it materially and adversely lessens the quality of the materials described in the Design Standards or otherwise materially and adversely deviates from the Design Standards and the Conceptual Elevations.

C. If the City Manager approves of the requested modification, the Design Standards shall be considered modified for purposes of this Agreement to include the requested modification. If the City Manager does not timely approve or disapprove of the requested modification in writing, it shall be deemed to have approved of the same. If the City Manager timely provides a complete written notice to Developer wherein it disapproves of the requested modification, then the City and Developer shall meet within 10 business days after delivery of such written notice to resolve such dispute and if such dispute is not resolved by written agreement executed by the City and Developer within 10 business days after such meeting, either party may send a notice of default to the other Party and pursue its rights and remedies in accordance with Paragraph 3 above.

D. In the event the City approves any entitlements, permits, or other approvals for the Project that vary from the Design Standards, the Design Standards shall be

considered to have been automatically modified for purposes of this Agreement to include such variances. Provided Developer constructs the Project in compliance with such approved entitlements, permits, and other approvals, as evidenced by issuance of a temporary of final certificate of occupancy for the Project, Developer shall be deemed to have satisfied the condition in Paragraph 1(B)(ii).

25. Estoppel Certificates.

A. The City, at any time and from time to time upon not less than 10 business days' prior written notice from Developer, agrees to execute and deliver to Developer a statement in the form provided by Developer representing, warranting, and certifying to Developer and its successors and assigns: (i) that this Agreement is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect; (ii) that Developer has timely and fully performed its obligations under this Agreement and is not in default under this Agreement, or describing such defaults if they are claimed; (iii) that the Project and Developer's applications for entitlements, permits, or other approvals for the Project comply with the Design Standards, as modified pursuant to Paragraph 24; (iv) whether the Design Standards have been modified pursuant to Paragraph 24, and describing or attaching the modifications; (v) that Developer has timely Commenced or Completed the Project; and (vi) such other matters as Developer may reasonably request.

B. The Authority, at any time and from time to time upon not less than 10 business days' prior written notice from Developer, agrees to execute and deliver to Developer a statement in the form provided by Developer representing, warranting, and certifying to Developer and its successors and assigns: (A) that, to the best of the Authority's knowledge, this Agreement is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect; and (B) that, to the best of the Authority's knowledge, Developer has timely and fully performed its obligations under this Agreement and is not in default under this Agreement, or describing such defaults if they are claimed.

C. The City's or Authority's failure to timely deliver such an executed statement to Developer shall be conclusive evidence that the City or Authority, as applicable, acknowledges and agrees with the representations, warranties, and certifications set forth in the statement provided by Developer for execution, and Developer shall be entitled to rely upon such evidence in constructing the Project and for purposes of enforcing this Agreement.

26. Representations and Warranties

A. Developer represents and warrants to the City and Authority that the following statements are true as of the Effective Date:

i. ***No Litigation***. There is no pending or, to Developer's actual knowledge, threatened litigation or claim against the Project or the Developer

related to the Project that would prohibit Developer from performing its obligations in this Agreement or render this Agreement invalid.

ii. ***Authorization***. Developer has all requisite power and authority to perform its obligations under this Agreement and the execution, delivery, and is duly and validly authorized to execute, enter into, and perform the obligation set forth in this Agreement. Each person executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction herein has due and proper authority to execute and deliver those documents. This Agreement and all documents executed and delivered by Developer in connection with the transaction herein shall constitute valid and binding obligations of Developer, enforceable against Developer in accordance with their terms.

iii. ***Organization of Developer***. Developer is a duly organized and validly existing limited liability company under the laws of the State of Delaware and with full power to enter into and to perform its obligations under this Agreement, and the individual executing this Agreement on behalf of the Developer is duly authorized to do so.

iv. ***No Breach or Prohibition***. To Developer's actual knowledge, the transactions contemplated by this Agreement are not restrained or prohibited by any injunction, order or judgment rendered by any court or other governmental agency of competent jurisdiction against Developer. To Developer's actual knowledge, neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby, will (a) be in violation of any agreements to which Developer is a party, or (b) conflict with or result in the breach or violation of any laws applicable to Developer or the Project.

B. The City represents and warrants to Developer and the Authority that the following statements are true as of the Effective Date:

i. ***No Litigation***. There is no pending or, to the City's actual knowledge, threatened litigation or claim against the City that would prohibit the City from performing its obligations in this Agreement or render this Agreement invalid.

ii. ***Organization***. The City is a home rule municipal corporation organized under the constitution and laws of the State of Colorado, validly existing under the laws of the State of Colorado and has the power and authority to transact the business in which it is engaged.

iii. ***Authority***. All governmental proceedings required to be taken on the part of the City to execute and deliver this Agreement and to consummate the transactions contemplated hereby have been duly and validly taken under the Greeley Municipal Charter provisions, subject to any referendum rights set forth in Section 9-3 of such Greeley Municipal Charter. Each person executing and

delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction herein has due and proper authority to execute and deliver those documents. This Agreement and all documents executed and delivered by the City in connection with the transaction herein shall constitute valid and binding obligations of the City, enforceable against the City in accordance with their terms.

iv. ***No Breach or Prohibition***. To the City's actual knowledge, the transactions contemplated by this Agreement are not restrained or prohibited by any injunction, order or judgment rendered by any court or other governmental agency of competent jurisdiction against the City. To the City's actual knowledge, neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby, will (a) be in violation of any agreements to which the City is a party, or (b) conflict with or result in the breach or violation of any laws applicable to the City or the Project.

C. The Authority represents and warrants to the City and Developer that the following statements are true as of the Effective Date:

i. ***No Litigation***. There is no pending or, to the Authority's actual knowledge, threatened litigation or claim against the Authority that would prohibit the Authority from performing its obligations in this Agreement or render this Agreement invalid.

ii. ***Organization***. The Authority is a body corporate and politic of the State of Colorado, validly existing under the laws of the State of Colorado and has the power to enter into this Agreement.

iii. ***Authority***. All proceedings required to be taken on the part of the Authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby have been duly and validly taken under the Authority's governing documents. Each person executing and delivering this Agreement has due and proper authority to execute and deliver this Agreement.

iv. ***No Breach or Prohibition***. To the Authority's actual knowledge, the transactions contemplated by this Agreement are not restrained or prohibited by any injunction, order or judgment rendered by any court or other governmental agency of competent jurisdiction against the Authority. To the Authority's actual knowledge, neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby, will (a) be in violation of any agreements to which the Authority is a party, or (b) conflict with or result in the breach or violation of any laws applicable to the Authority.

[SIGNATURE PAGES TO FOLLOW]

The Parties hereby agree to the same and execute this Agreement by their duly authorized representatives as follows:

City of Greeley, Colorado

_____

Mayor

_____

City Clerk

_____

_____

Date

Greeley Downtown Development Authority

_____

Authorized Signature

_____

Printed Name

_____

_____

Date

Developer

1024 8th Avenue, LLC, a Delaware limited liability company

_____

By: Tadd Miller, CEO
Authorized Agent

Approved as to Substance:

City Manager

Approved as to Legal Form:

City Attorney

Approved as to Availability of Funds:

Director of Finance

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF WELD, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOTS 9 AND 10 AND THE WEST HALF OF LOT 11, BLOCK 78, CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.
AND
LOT 1, BLOCK 78, ROTH SUBDIVISION, A SUBDIVISION OF THE CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.
AND
THE EAST HALF OF LOT 12, ALL OF LOTS 13 AND 14, BLOCK 78, CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.
AND
LOT 2, BLOCK 78, ROTH SUBDIVISION, A SUBDIVISION OF THE CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.

PARCEL B:

THE SOUTH 100 FEET OF LOTS 15 AND 16, BLOCK 78, CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO.

EXHIBIT B

DESIGN GUIDELINES

All development design shall conform to the Greeley Municipal Code and, also, reflect historic architectural elements and character with substantial attention to the following characteristics:

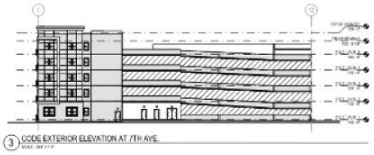
A. Use of brick as a key building material, especially at the pedestrian level;
B. Use of accent color on buildings to create a vibrant streetscape;
C. Strong corner building elements to clearly define entry points and add interest, such as with stepped back floors and rooftop features;
D. Use of high quality building materials;
E. Balconies extending out from the building as well as recessed bays to create interesting building wall articulation;
F. Use of warm, brick reds, and red and blond brick to blend with existing structures in the area;
G. Pedestrian-oriented building features, such as with generous first floor fenestration;
H. Gabled roof elements to match existing pitch and design elements.

EXHIBIT C

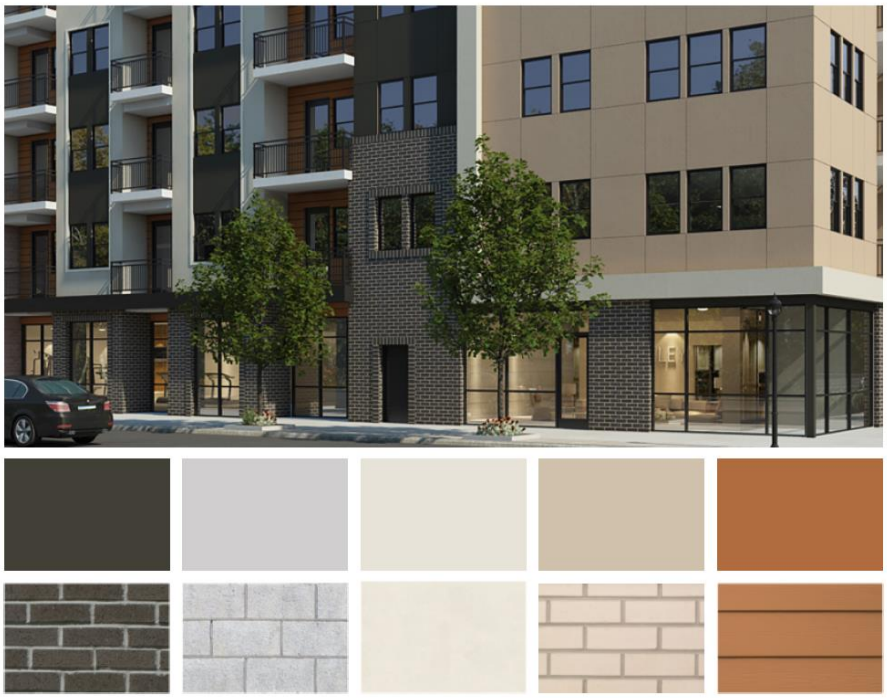
CONCEPTUAL ELEVATIONS AND RENDERINGS

EXTERIOR ELEVATIONS

Massing & Materiality



EXTERIOR DESIGN
Material & Color Palette



EXTERIOR RENDER
Corner of 8th Ave & 11th St

EXHIBIT D

ELIGIBLE DDA IMPROVEMENTS

1024 8th Avenue Apartments Eligible Costs			
1	Sitework	$	2,754,452
2	Building Concrete	$	7,886,364
3	Masonry/Siding/Roofing	$	3,581,722
4	Metals	$	963,210
5	Carpentry & Millwork	$	5,311,455
6	Doors/Windows/Framing & Drywall	$	5,790,183
7	Casework/Finishes & Fire Protection	$	3,106,489
8	Specialties, Appliances & Furnishings	$	1,290,346
9	Elevator	$	382,500
10	Mechanical, Electrical & Plumbing	$	10,495,539
11	Demolition & Abatement	$	619,257
12	Architectural & Engineering	$	2,031,608
	TOTAL	**$**	**44,213,125**