

**RESOLUTION OF THE BOARD OF DIRECTORS OF
MOUNTAIN BROOK METROPOLITAN DISTRICT**

A RESOLUTION APPROVING THE IMPROVEMENT ACQUISITION, ADVANCE AND REIMBURSEMENT AGREEMENT BETWEEN THE DISTRICT AND MOUNTAIN BROOK PARTNERS, LLC, AND IN CONNECTION THEREWITH, AUTHORIZING THE ISSUANCE OF A NEW SUBORDINATE PROMISSORY NOTE TO EVIDENCE THE DISTRICT'S REIMBURSEMENT OBLIGATION TO MOUNTAIN BROOK PARTNERS, LLC FOR ORGANIZATION COSTS AND CAPITAL COSTS

WHEREAS, Mountain Brook Metropolitan District (the "District") was formed after approval of the eligible electors of the District at an organizational election held on May 5, 2020, pursuant to Section 32-1-101 *et seq.*, C.R.S., as amended, and by order of the District Court for Boulder County, Colorado, for the purpose of assisting in the financing, construction, operations and maintenance of certain public improvements for a new development known as Mountain Brook; and

WHEREAS, on October 8, 2019, the City Council of the City of Longmont, Colorado approved the "Service Plan for Mountain Brook Metropolitan District" (the "Service Plan") for the purpose of providing certain parameters for the financing and development of Mountain Brook; and

WHEREAS, at the Organizational Election, a majority of eligible electors in the District approved the District's issuance of indebtedness and the imposition of ad valorem taxes by the District for the purpose of repaying such debt; and

WHEREAS, Mountain Brook Partners, LLC ("MBP") and/or its affiliates paid the costs associated with the organization of the District ("Organization Costs"), which costs are reimbursable to MBP from the District; and

WHEREAS, pursuant to the Service Plan, the District will finance, construct, own (subject to discretionary transfer to other governmental entities or authorities), operate and maintain public improvements (the "Improvements") to serve the District and Mountain Brook development; and

WHEREAS, in furtherance of its Service Plan, the District will incur capital costs associated with the acquisition and construction of Improvements; and

WHEREAS, the District currently lacks sufficient funds to finance the acquisition and construction of Improvements and to reimburse MBP for the Organization Costs; and

WHEREAS, MBP is willing to design, construct and install Improvements for the benefit of the District and/or advance funds to the District for the District to design, construct and install Improvements, provided the District agrees to repay MBP for the Organization Costs and the Improvements constructed by MBP, including those Improvements transferred to other governmental entities or authorities, and to reimburse MBP for advances made to the District for the construction of Improvements by the District; and

WHEREAS, the District has agreed to repay MBP for the Organization Costs, costs associated with Improvements constructed by MBP, and for advances made to the District for the construction of Improvements by the District, such repayment to be subject to the annual appropriation of funds by the District, in accordance with the terms hereof; and

WHEREAS, the District and MBP have negotiated and desire to enter into an "Improvement Acquisition, Advance and Reimbursement Agreement," as attached hereto as Exhibit A ("Agreement") for the purpose of consolidating all understandings and commitments between the Parties relating to the funding and repayment of the Operation Costs; and

WHEREAS, to evidence the District's repayment obligation to MBP for funds advanced to or expended on behalf of the District pursuant to the MBP Agreement, the District has agreed to issue, upon the effective date of the Agreement, a subordinate promissory note, as attached hereto as Exhibit B and incorporated herein by reference (the "Subordinate Note"), to MBP, upon the effective date of the Agreement, in a principal amount not to exceed Nine Million Dollars (\$9,000,000).

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF MOUNTAIN BROOK METROPOLITAN DISTRICT AS FOLLOWS:

1. The Board of Directors hereby approves the Agreement, attached hereto as Exhibit A, and authorizes the President of the District to execute the Agreement, and a designated representative of the District, including the District's General Counsel or other officer of the District, to attest the same.

2. The Board of Directors hereby authorizes the issuance of the Subordinate Note, as attached hereto as Exhibit B, to MBP, such Subordinate Note to be issued upon the effective date of the Agreement, and authorizes the President of the District to execute the Subordinate Note, and a designated representative of the District, including the District's General Counsel or other officer of the District, to attest the same.

3. This Resolution shall take effect on the date and at the time of its adoption.

(Signature Page Follows.)

ADOPTED AND APPROVED THIS 24th DAY OF AUGUST, 2020.

MOUNTAIN BROOK METROPOLITAN DISTRICT

By: Kevin Mulshine
Its: President

ATTEST:
(By District Representative)

By: Alan D. [Signature]
Its: General Counsel

EXHIBIT A
(To Resolution)

IMPROVEMENT ACQUISITION, ADVANCE AND REIMBURSEMENT AGREEMENT

**IMPROVEMENT ACQUISITION, ADVANCE AND REIMBURSEMENT AGREEMENT
(Organization and Capital Costs)**

THIS IMPROVEMENT ACQUISITION, ADVANCE AND REIMBURSEMENT AGREEMENT (the “Agreement”) is made and entered into as of this 24th day of August, 2020, by and between MOUNTAIN BROOK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and MOUNTAIN BROOK PARTNERS, LLC, a Colorado limited liability company (“MBP”), collectively, the “Parties.”

RECITALS

WHEREAS, the District was formed after approval of the eligible electors of the District at an organizational election held on May 5, 2020 (“Organizational Election”), pursuant to Section 32-1-101 *et seq.*, C.R.S., as amended, and by order of the District Court for Boulder County, Colorado, for the purpose of assisting in the financing, construction, operations and maintenance of certain public improvements for a new development known as Mountain Brook; and

WHEREAS, on October 8, 2019, the City Council of the City of Longmont, Colorado approved the “Service Plan for Mountain Brook Metropolitan District” (the “Service Plan”) for the purpose of providing certain parameters for the financing and development of Mountain Brook; and

WHEREAS, at the Organizational Election, a majority of eligible electors in the District approved the District’s issuance of indebtedness and the imposition of ad valorem taxes by the District for the purpose of repaying such debt; and

WHEREAS, MBP and/or its affiliates paid the costs associated with the organization of the District (“Organization Costs”), which costs are reimbursable to MBP from the District; and

WHEREAS, pursuant to the Service Plan, the District will finance, construct, own (subject to discretionary transfer to other governmental entities or authorities), operate and maintain public improvements (the “Improvements”) to serve the District and Mountain Brook development; and

WHEREAS, in furtherance of its Service Plan, the District will incur capital costs associated with the acquisition and construction of Improvements; and

WHEREAS, the District currently lacks sufficient funds to finance the acquisition and construction of Improvements and to reimburse MBP for the Organization Costs; and

WHEREAS, MBP is willing to design, construct and install Improvements for the benefit of the District and/or advance funds to the District for the District to design, construct and install Improvements, provided the District agrees to repay MBP for the Organization Costs and the Improvements constructed by MBP, including those Improvements transferred to other governmental entities or authorities, and to reimburse MBP for advances made to the District for the construction of Improvements by the District; and

WHEREAS, the District has agreed to repay MBP for the Organization Costs, costs associated with Improvements constructed by MBP, and for advances made to the District for the construction of Improvements by the District, such repayment to be subject to the annual appropriation of funds by the District, in accordance with the terms hereof; and

WHEREAS, the District and MBP have negotiated, and desire to enter into this Agreement for the purpose of consolidating all understandings and commitments between the Parties relating to the funding and repayment of the Organization Costs and the costs associated with acquisition and construction of Improvements, as set forth herein; and

WHEREAS, to evidence the District's repayment obligation to MBP for costs associated with the acquisition and construction of Improvements and with the Organization Costs, the District desires to issue a subordinate promissory note ("Subordinate Note," and each subordinate promissory note issued hereunder shall be referred to as a Subordinate Note) to MBP in a principal amount not to exceed Nine Million Dollars (\$9,000,000), subject to the terms herein; and

WHEREAS, the District's Board of Directors (the "Board") and MBP's Board of Managers have authorized its officers to execute this Agreement and to take all other actions necessary and desirable to effectuate the purposes of this Agreement; and

WHEREAS, those employees and/or affiliates of MBP who serve on the District's Board have each disclosed potential conflicts of interest in connection with this Agreement, as required by law.

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

COVENANTS AND AGREEMENTS

1. Purpose of Agreement. The Parties acknowledge that the District does not presently have the funds to construct the Improvements to serve the District and the property owners and residents in the Mountain Brook development. In furtherance of the purposes of the District as expressed in the Service Plan, this Agreement shall provide a means by which the District may reimburse MBP for (i) certain Certified District Eligible Costs (as such term is defined herein) of Improvements financed and constructed by MBP, (ii) advances made to the District for the construction of Improvements by the District, and (iii) the Organization Costs. For purposes of this Agreement, the term "Certified District Eligible Costs" shall mean "District Eligible Costs" (as defined below) with respect to which the District has issued an "Acceptance Resolution" as hereinafter provided.

2. Improvement Acquisition Procedures/Application for Acceptance. The Parties hereby acknowledge and agree that MBP may design and construct, or cause to be designed and constructed, certain Improvements, as described in the Service Plan, for the benefit of the Mountain Brook development, subject to the terms and conditions set forth herein. MBP will only

construct improvements as authorized by the District and the District is not authorized to accept any improvements or certify any costs for any Improvements that are not pre-approved by the District and agreed to by MBP. MBP agrees to design, construct, and complete any such Improvements in substantial conformance with the design standards and specifications as established and in use by the District, the City and other appropriate jurisdictions. Upon completion of the Improvements, MBP shall submit an application for reimbursement of District Eligible Costs for the Improvements to be transferred to other governmental entities or authorities, or owned by the District by submitting the materials, set forth below, in form and substance satisfactory to the District. For purposes of this Agreement, the term “District Eligible Costs” shall mean any and all costs of any kind related to the provision of the Improvements that may be lawfully funded by the District under the Special District Act and the Service Plan.

a. Dedicated Improvements. With respect to Improvements that are being transferred to other governmental entities or authorities, MBP shall furnish the following to the District:

(1) A completed “Application for Acceptance of District Eligible Costs” on the District’s standard form, attached hereto and incorporated herein as Exhibit A;

(2) A description of the Improvements to be dedicated and the proposed District Eligible Costs thereof;

(3) Contracts and approved change orders;

(4) Copies of all invoices, statements and evidence of payment thereof equal to the proposed District Eligible Costs, including lien waivers from any suppliers and subcontractors;

(5) A letter from the governmental entity to which the Improvements are being dedicated evidencing the governmental entity’s preliminary or conditional acceptance of such Improvements, subject to any applicable warranty period;

(6) A letter agreement in form and substance satisfactory to the District addressing the maintenance of such Improvements during the applicable warranty period, MBP’s commitment to fund the costs of any corrective work that must be completed before final acceptance by the governmental entity to which such Improvements are being dedicated, and MBP’s agreement to obtain final acceptance from the governmental entity; and

(7) Such additional information as the District may reasonably require.

b. Acquired Improvements. With respect to Improvements to be acquired by the District, MBP shall furnish the following:

(1) A completed “Application for Acceptance of Improvements” on the District’s standard form, attached hereto and incorporated herein as Exhibit B;

(2) A description of the Improvements to be acquired and the proposed District Eligible Costs thereof;

(3) Bid tabulations, bid evaluations, contracts and approved change orders;

(4) Copies of all invoices, statements and evidence of payment thereof equal to the proposed District Eligible Costs, including lien waivers from any suppliers and subcontractors;

(5) Evidence that any and all real property interests necessary to permit the District's use and occupancy of the Improvements have been granted, or, in the discretion of District, assurances acceptable to the District that MBP, as applicable, will execute or cause to be executed such instruments as shall satisfy this requirement;

(6) A complete set of digital record drawings of the Improvements which are certified by a professional engineer registered in the State of Colorado or a licensed land surveyor, showing accurate dimensions and location of all Improvements. Such drawings shall be in form and content reasonably acceptable to the District;

(7) Approved landscape plan and certification by a landscape architect or engineer that all landscape improvements were installed in accordance with the approved landscape plan(s) (*if applicable*);

(8) Test results for improvements conforming to industry standards (compaction test results, concrete tickets, hardscape test results, cut-sheets etc.) (*if applicable*);

(9) Pressure test results for any irrigation system (*if applicable*);

(10) Certification from an independent engineer or other appropriate design professional (such professional shall not have been previously engaged by MBP on the construction of the Improvements) stating that 1) the Improvements have been inspected for compliance with approved designs, plans and construction standards, 2) that the Improvements (or its individual components and/or subsystems, if applicable) have been substantially constructed in accordance with the approved designs, plans and construction standards, and, 3) the Improvements are fit for its intended purpose (the "Engineer's Design Certification");

(11) Assignment of any warranties or guaranties;

(12) Any operation and maintenance manuals;

(13) An executed Bill of Sale and Warranty Agreement in form and substance acceptable to the District;

(14) If the District is to assume ownership of any real property, a title commitment and form of Special Warranty Deed, in a form acceptable to the District, conveying the real property free and clear of all liens, claims and other encumbrances; and

(15) Such additional information as the District may reasonably require.

3. Application Review Procedures/Acceptance Resolution. Following receipt of an Application for Acceptance of District Eligible Costs or an Application for Acceptance of Improvements (collectively, the "Application") as described above, and within a reasonable period of time thereafter:

a. The District manager shall review the Application to ensure all required materials have been submitted with the Application. Incomplete Applications will not be processed and will be returned to MBP to complete and resubmit to the District.

b. The District accountant shall review the invoices and other material presented in the Application to substantiate the District Eligible Costs set forth therein and shall issue a cost certification in form and substance reasonably acceptable to the District Board, certifying the total amount of District Eligible Costs associated with the Improvements to be dedicated to other governmental entities or acquired by the District (the "Accountant Cost Certification"). If the District accountant cannot substantiate all District Eligible Costs reported in the Application or determines that only certain costs reported in the Application qualify as District Eligible Costs, the District's accountant shall discuss the same with MBP and only certify those District Eligible Costs that can be substantiated and reimbursed by the District.

c. The District's engineer (such engineer shall be independent of any engineer engaged by MBP to perform work on the Improvements) shall also review the invoices and other material presented in the Application, including the Engineer Design Certification, to substantiate the District Eligible Costs and shall issue a cost certification in form and substance reasonably acceptable to the District, certifying the total amount of District Eligible Costs associated with the Improvements to be dedicated to other governmental entities or acquired by the District and that such costs are reasonable and appropriate for the type of Improvements being constructed in the vicinity of the Mountain Brook development (the "Engineer's Cost Certification"). In the event the District's engineer determines that corrective work must be completed before the Engineer's Cost Certification can be issued or that costs associated with the Improvements are not deemed reasonable or appropriate, MBP shall promptly be given written notice thereof and shall have an opportunity to dispute and/or complete such corrective work. The District's engineer shall only certify those District Eligible Costs that have been certified by the District's accountant as set forth in the Accountant Cost Certification. To the extent the District's engineer cannot certify all District Eligible Costs set forth in the Accountant Cost Certification, the District accountant and engineer shall work together to resolve any discrepancies and provide written notice to MBP of any final adjustments to the total District Eligible Costs to be certified by the District's accountant and engineer.

d. Upon receipt of a satisfactory Accountant's Cost Certification, Engineer's Cost Certification and, if applicable, Engineer's Design Certification, and within a reasonable time

thereafter, the District shall accept the District Eligible Costs, and any related Improvements to be owned by the District, by adopting a Resolution declaring satisfaction of the conditions to acceptance as set forth herein (subject to any variances or waivers which the District may allow in its sole and absolute discretion), with any reasonable conditions the District may specify (the “Acceptance Resolution”).

4. Payment of Certified District Eligible Costs. The District shall repay Certified District Eligible Costs approved by the District pursuant to the Acceptance Resolution from the proceeds of Bonds (as defined and subject to certain limitations set forth below) issued by the District, such issuance to occur in the District’s sole discretion, and/or other legally available funds of the District, subject to appropriation by the District. In the event the District lacks funds from the aforementioned sources at the time of adoption of the Acceptance Resolution, the District shall evidence its obligation to repay MBP for the Certified District Eligible Costs on the Subordinate Note issued to MBP pursuant to Paragraph 7 herein.

5. Advances for Construction of Improvements. The Parties acknowledge that the District may construct certain Improvements to serve the Mountain Brook development and lacks sufficient funds to pay the costs associated with the construction of such Improvements. MBP hereby agrees to advance such funds to the District or expend such funds on behalf of the District in one or more installments, provided that in no event shall the total amount that MBP must advance to the District or expend on behalf of the District exceed Nine Million Dollars (\$9,000,000) (the “Maximum Principal Amount”). The Maximum Principal Amount constitutes the maximum amount that may be advanced or expended hereunder, notwithstanding any payment or prepayment of any portion of the funds advanced or expended pursuant to the terms hereof, unless this Agreement is further supplemented or amended. Advanced funds shall be available to the District in one or a series of installments as of the effective date of this Agreement through December 31, 2020, which period shall constitute the “Funding Obligation Term” of this Agreement. The District’s repayment obligation shall survive the Funding Obligation Term until MBP is repaid in full, provided that the District’s repayment obligation shall terminate on the date that is forty (40) years after the execution date hereof, even if any portion of the Maximum Principal Amount remains outstanding.

6. Manner for Requesting Advances. MBP is obligated to promptly advance funds to the District or expend funds on the District’s behalf upon proper request from the District, in the specific amounts requested. The procedure for making such a request shall be as follows:

A. The District’s Board shall hold public meetings, as necessary, to review and authorize the execution of contracts and the incurrence of other fees and costs, and to authorize payments and expenditures therefor, consistent with the Service Plan and budget. At said meetings, MBP, any and all consultants, contract parties, and/or other individuals or entities shall have the opportunity to submit invoices and/or other notices of payment due for review and authorization. If the District Board determines that said invoices and/or notices of payment are consistent with the Service Plan, the terms of this Agreement, and the applicable budget, it shall authorize payment therefor contingent on the receipt of funds advanced from MBP, or authorize expenditures to be made by MBP on behalf of the District.

B. Thereafter, the District shall advise MBP in writing of the amount to be advanced to or expended on behalf of the District in an amount sufficient to pay said invoices and/or notices of payment or expenditures. The District shall certify that the funds so requested are to be used for purposes permitted under this Agreement and consistent with the Service Plan.

C. Immediately upon the receipt of funds from MBP, or when funds are expended by MBP on behalf of the District, the District shall maintain evidence of the (i) amount of funds advanced to or expended on behalf of the District; (ii) date such amount was advanced or expended; (iii) total amount of funds advanced to the District and/or expended on the District's behalf to date pursuant to this Agreement; and (iv) total unpaid accrued interest due thereon. In addition, the District shall notate the same on Schedule "A" of the Subordinate Note to be issued hereunder as provided in Paragraph 7 hereof. The District will make such evidence available to MBP upon reasonable request and such evidence shall constitute the agreed-upon amounts to be repaid by the District in accordance with the terms of this Agreement.

7. Issuance of the Subordinate Note; Recordation of Advances; Interest.

A. On the effective date of this Agreement, the District shall promptly issue, execute, and deliver to MBP a Subordinate Note, substantially in the form as attached hereto as Exhibit C, in an amount not to exceed the Maximum Principal Amount, which Subordinate Note shall evidence the District's repayment obligation to MBP for funds advanced to or expended on behalf of the District, as provided in this Agreement.

B. Each Subordinate Note issued hereunder shall bear simple interest as to each advance or expenditure made hereunder at a fixed rate not to exceed the Federal Reserve Prime Rate as published in the Wall Street Journal plus 1%, from the date such advance or expenditure is made, regardless of the date such advance or expenditure is noted on Schedule A, to the earlier of the maturity date or date of redemption thereof, subject to Paragraph 11.B. hereof. Said interest shall be payable upon maturity of any Subordinate Note. If the Subordinate Note, or any portion thereof, is redeemed prior to its maturity date, then the interest that accrued on the principal amount so redeemed, must be paid upon redemption; for purposes of the foregoing, interest shall be deemed to have accrued up to and including the date of redemption.

C. Upon receipt of each advance from MBP or upon any approved amount expended by MBP on the District's behalf, the District shall complete the appropriate information on Schedule "A" of the Subordinate Note, showing the amount of each advance or expenditure, the date of receipt, and the total principal and unpaid accrued interest thereon.

D. The Subordinate Note shall be repayable only to the extent, and in the amount of, advances and expenditures noted as outstanding on Schedule "A" thereto, which amount shall not exceed the Maximum Principal Amount, including any advances to or expended on behalf of the District, notwithstanding any payment or prepayment of any portion of the advances pursuant to the terms thereof, unless this Agreement and the Subordinate Note are further supplemented or amended.

E. The terms of this Agreement may be used to construe the intent of the District and MBP in connection with the issuance of the Subordinate Note, and shall be read as nearly as possible to make the provisions of any Subordinate Note and this Agreement fully effective. Should any irreconcilable conflict arise between the terms of this Agreement and the terms of any Subordinate Note, the terms of such Subordinate Note shall prevail.

F. If, for any reason, the Subordinate Note is determined to be invalid or unenforceable (except in the case of fraud by MBP in connection therewith), the District shall issue a new promissory note to MBP that is legally enforceable. Said new Subordinate Note must evidence the District's obligation to repay all amounts advanced or expended pursuant to this Agreement with interest, subject to the terms hereof.

8. Terms of Repayment; Source of Revenues.

A. Subject to Paragraph 11.B. hereof, any funds advanced to or expended on behalf of the District hereunder shall be repaid in accordance with the terms of the Subordinate Note on which the amount of such outstanding and unpaid obligation is notated and in accordance with the terms provided herein. The Subordinate Note shall have a maturity date of December 31, 2020. If the District lacks sufficient funds to pay the Subordinate Note in full on that date, the District hereby agrees to issue a new Subordinate Note to MBP to refund the existing Subordinate Note, subject to the annual appropriation of funds by the District, which new Subordinate Note shall be in an amount equal to the outstanding principal of the Subordinate Note to be refunded, and include any unpaid accrued interest thereon, and shall have a maturity date of December 31, 2021. Similarly, subject to Paragraph 11.B. hereof, until such time as the District is able to pay in full the amount of any Subordinate Note then outstanding including any interest due thereon, the District shall issue a new Subordinate Note to refund any existing Subordinate Note which, at the date of its maturity, remains unpaid, subject to the annual appropriation of funds by the District. Schedule "A" of each new Subordinate Note issued by the District shall reflect all outstanding principal on the Subordinate Note being refunded and all unpaid accrued interest to date. The District's agreement to issue additional Subordinate Notes to refund any Subordinate Note remaining unpaid at its maturity does not constitute a multiple fiscal year obligation under the State of Colorado Constitution and any payments to be made thereon shall be subject to annual appropriations by the District.

B. Subject to the conditions set forth in this Paragraph 8.B., the District shall repay the Subordinate Note from (i) all or a portion of the proceeds of one or more series of general or special obligation bonds, revenue bonds or other multiple fiscal year obligations of the District, including, without limitation, loans from financial institutions (collectively, the "Bond" or "Bonds") issued by the District; ***provided, however, in no event shall the net proceeds generated from any District Bonds (excluding privately placed debt issued solely to MBP) be used to reimburse MBP for costs associated with construction of the Improvements in an amount that exceeds Nine Million Dollars (\$9,000,000), plus simple interest accrued on the amounts being reimbursed,*** and (ii) any other revenues of the District, as the District determines in its sole discretion, are available for such purpose, including fees, rates, tolls, and charges, subject to any restrictions provided in the Service Plan and electoral authorization. The issuance of any Bonds by the District shall be made in the sole discretion of the District, and issued at such time or times,

and contain such terms, as may be determined by the District. *Any repayment of the Subordinate Note shall be subject to the annual appropriations of funds by the District; and further provided, such repayment shall be subject to the terms and conditions of, and such repayment obligations shall be subordinate to, the Bonds and any refundings thereof, and the provisions of any Bond resolution, indenture, pledge agreement, loan document and/or any other document related thereto; and further provided that any mill levy certified by the District for the purpose of repaying the Subordinate Note shall not be higher than the Service Plan mill levy cap for such District, as it now exists or may be amended from time to time as provided therein.* The Subordinate Note must be paid in full by the District prior to payment of any other obligation thereof that may have a claim on any District revenues which are otherwise available for payment of the Subordinate Note, other than current District operation and maintenance expenses, other budgeted general operating expenditures of the District, and as otherwise provided in this Paragraph 8.B.

C. Repayment by the District of some or all the amounts owing hereunder, as evidenced on any Subordinate Note issued hereunder, shall be contingent upon the availability of Bond proceeds or other legally available revenues of the District described in Paragraph 8.B. hereof. Failure by the District to repay the amounts due hereunder as a result of insufficient funds shall not constitute a default, nor subject the District to any claims and/or causes of action by MBP, including mechanic's liens, arising out of the District's nonperformance of its payment obligation. Failure by the District to make a payment of principal and/or interest on the Subordinate Note shall not cause or permit acceleration thereof; rather, the Subordinate Note shall continue to bear interest at the rate and in the manner specified therein and herein.

D. Any Subordinate Note may be prepaid, in whole or in part, at any time without redemption premium or other penalty, but with interest accrued to the date of prepayments on the principal amount prepaid. Any and all prepayments shall first be applied to unpaid accrued interest and then to the principal amount outstanding.

E. Any Subordinate Note issued hereunder shall be repayable only to the extent of the amount owed by the District as noted on Schedule "A" attached to the Subordinate Note.

F. Any repayment made to MBP by the District shall be notated on Schedule "A" to such Subordinate Note.

9. Obligations Irrevocable. The obligations created by this Agreement are absolute, irrevocable, and unconditional, unless a contrary notation is specifically made herein, and may only be modified pursuant to Paragraph 17 herein. MBP shall not take any action which would delay or impair the District's ability to receive the advanced proceeds contemplated herein with sufficient time to properly pay approved invoices and/or notices of payment due.

10. Tax Covenant. In the event the District is advised by nationally recognized bond counsel that payments of all or any portion of interest due on any Subordinate Note issued hereunder may be excluded from gross income of the holder thereof for federal income tax purposes upon compliance with certain procedural requirements and restrictions that are not inconsistent with the intended uses of funds contemplated herein and are not overly burdensome to the District, the District agrees to take all action reasonably necessary to satisfy the applicable provisions of the Internal Revenue Code of 1986, as amended, and regulations promulgated

thereunder, in accordance with written instructions of nationally recognized bond counsel. MBP acknowledges that no representations or warranties whatsoever have been made by the District or its Board as to the treatment for federal or state income tax purposes of any interest payable hereunder.

11. Termination.

A. MBP's obligation to construct, or cause to be constructed the Improvements, and/or to advance funds to the District or expend funds on the District's behalf in accordance with this Agreement shall terminate on December 31, 2020, except to the extent that (i) advance requests have been made to MBP that are pending by this termination date, in which case said pending request(s) will be honored notwithstanding the passage of the termination date, or (ii) the Funding Obligation Term of this Agreement has been extended by the Parties via written amendment, as provided in Paragraph 17 herein.

B. The District's obligations hereunder shall terminate upon the earlier of: (i) repayment in full of the Maximum Principal Amount or such lesser amount advanced or expended on its behalf hereunder if it is determined by the District that no further advances to and/or expenditures made on behalf of the District shall be required and no Improvements constructed by MBP shall be acquired by the District hereunder, as evidenced pursuant to any Subordinate Note issued hereunder; or (ii) forty (40) years from the execution date hereof. Any amounts remaining outstanding on the Subordinate Note forty (40) years from the execution date hereof shall be discharged with no further amounts due by the District.

12. Subject to Annual Appropriations. The District does not intend to create hereunder a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District's repayment obligations set forth herein, and as further evidenced on a Subordinate Note issued by the District to MBP pursuant to the terms of this Agreement, are subject to the annual appropriation of funds by the District.

13. Time Is of the Essence. Time is of the essence hereof; provided, however, that if the last day permitted or the date otherwise determined for the performance of any act required or permitted under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated.

14. Indemnification. MBP hereby agrees to indemnify and save harmless the District from all claims and/or causes of action, including mechanic's liens, arising out of MBP's performance of any act or the nonperformance of any obligation with respect to the Improvements constructed and conveyed to the District or dedicated to the City, and in that regard, agrees to pay any and all costs incurred by the District as a result thereof, including settlement amounts, judgments and reasonable attorneys' fees.

15. Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

16. Notices and Place for Payments. Any notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be given in writing and shall be delivered in person, by certified mail, postage prepaid, return receipt requested, by a commercial overnight courier that guarantees next day delivery and provides a receipt, or by electronic mail communications (“E-Mail”), and such notices shall be addressed as follows:

If to the District: Mountain Brook Metropolitan District
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, CO 80228
Attn: Peggy Ripko, District Manager
Email: pripko@sdmsi.com

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

If to MBP: Mountain Brook Partners, LLC
700 Ken Pratt Blvd., Ste. 113
Longmont, CO 80501
Attn: Kevin Mulshine
Email: kmulshine@HMSDevelopment.com

or to such other address as either party may from time to time specify in writing to the other party. Notice shall be considered delivered upon delivery by certified mail, overnight courier, E-Mail or upon hand delivery. When using E-Mail to provide notice, the receiving party must respond via “reply” acknowledging receipt of the E-Mail notification or a read receipt or delivery receipt must be provided to the sender. If the sending party fails to receive acknowledgement of such receipt, an alternative form of notification must be used.

17. Amendments. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by both the District and MBP.

18. Assignment. This Agreement may not be assigned, in whole or in part. Any attempted assignment in violation of this paragraph shall be immediately void and of no effect.

19. Applicable Laws. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado.

20. Severability. If any clause or provision of this Agreement is adjudged invalid and/or unenforceable by a court of competent jurisdiction or by operation of any law, such clause or provision shall not affect the validity of this Agreement as a whole, but shall be severed herefrom, leaving the remaining Agreement intact and enforceable.

21. Authority. By execution hereof, the District and MBP represent and warrant that their respective representatives signing hereunder have full power and authority to execute this Agreement and to bind the respective party to the terms hereof.

22. Legal Existence. The District will maintain its legal identity and existence so long as any of the advanced amounts contemplated herein remain outstanding. The foregoing statement shall apply unless, by operation of law, another legal entity succeeds to the liabilities and rights of the District hereunder without materially adversely affecting MBP' privileges and rights under this Agreement.

23. Entire Agreement. This Agreement and the Subordinate Note issued hereunder constitute and represent the entire, integrated agreement between the District and MBP with respect to the matters set forth herein and therein, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to those matters, whether written or oral. This Agreement shall become effective upon the date and year first written above.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

[Signature pages follows.]

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

MOUNTAIN BROOK METROPOLITAN
DISTRICT


By: Kevin Mulshine
Its: President

ATTEST:


By: Alan D. Poore
Its: GENERAL COUNSEL

MOUNTAIN BROOK PARTNERS, LLC,
a Colorado limited liability company


By: Kevin Marshine
Its: _____

EXHIBIT A

(To Improvement Acquisition, Advance and Reimbursement Agreement)

APPLICATION FOR ACCEPTANCE OF DISTRICT ELIGIBLE COSTS

Application for Acceptance of District Eligible Costs

Applicant Name: _____

Applicant Address: State: _____ **Zip:** __

Daytime Phone #: () _____ **Alt./Cell:** () _____

Email: _____

Description and Location of Public Improvements: (please include a narrative description and attach maps/exhibits showing the location of all improvements) _____

Public Improvement Category and Costs: (a separate spreadsheet with the information set forth below may be provided in lieu of completing the chart below)

Description of Improvement	Entity That Will Own, Operate and Maintain Improvement	Improvements located within Public Property, Easements, or Public ROW (please specify)	Hard Construction Costs (including Staking and Testing) <i>Please include name of vendor next to dollar amount</i>	Soft Costs (Engineering, Legal, Planning, Landscape & Irrigation Design) <i>Please include name of vendor next to dollar amount</i>
Street Improvements:				
Water Improvements:				
Sanitary Sewer Improvements:				

Parks & Recreation, Landscaping & Irrigation:				
Other Improvements:				

Required to be submitted:

- Completed and Signed Application
- Contracts and Approved Change Orders
- Invoices and Pay Applications
- Evidence of Payment
- Lien Waivers
- Acceptance Letters for Improvements from Applicable Jurisdictions
- Agreement Addressing Maintenance and Corrective Work Prior to Final Acceptance
- Any other information reasonably requested by District

If any of the materials above are not included in the submission, please provide reason: _____

Total amount of District Eligible Costs requested for reimbursement: \$ _____

By its signature below, Applicant certifies that this Application for Acceptance of District Eligible Costs and all documents submitted in support of this application are true and correct, that the Applicant is authorized to sign this application, and the costs submitted for reimbursement herein qualify as District Eligible Costs in accordance with the Improvement Acquisition, Advance and Reimbursement Agreement with Mountain Brook Metropolitan District.

Signature: _____

Date: _____

EXHIBIT B

(To Improvement Acquisition, Advance and Reimbursement Agreement)

APPLICATION FOR ACCEPTANCE OF IMPROVEMENTS

Application for Acceptance of Improvements

(To be owned, operated and maintained by the District)

Applicant Name: _____

Applicant Address: State: _____ **Zip:** __

Daytime Phone #: () _____ **Alt./Cell:** () _____

Email: _____

Description and Location of Public Infrastructure: (please include a narrative description and attach maps/exhibits showing the location of all improvements) _____

Public Improvement Category and Costs: (a separate spreadsheet with the information set forth below may be provided in lieu of completing the chart below)

Description of Improvement	Improvements located within District Property, Easements, or Public ROW	Hard Construction Costs (including Staking and Testing) <i>Please include name of vendor next to dollar amount</i>	Soft Costs (Engineering, Legal, Planning, Landscape & Irrigation Design) <i>Please include name of vendor next to dollar amount</i>
Street Improvements:			
Water Improvements:			
Sanitary Sewer Improvements:			
Parks & Recreation, Landscaping & Irrigation:			
Other Improvements:			

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Required to be submitted:

- Completed and Signed Application
- Bid Tabulation and Evaluation
- Contracts and Approved Change Orders
- Invoices and Pay Applications
- Evidence of Payment
- Lien Waivers
- Approved Landscape Plan and Landscape Architect or Engineer Certification of Landscape Improvements (if applicable)
- Test Results for improvements conforming to industry standards, Videos, CADD files, etc.
- Pressure Test Results for any irrigation system (if applicable)
- Evidence of Real Property Interests in favor of District (if applicable)
- Partial Release from lender (if applicable)
- Record Drawings certified by a professional engineer or licensed land surveyor
- Engineer Certification of Public Infrastructure
- Assignment of Warranties or Guaranties
- Operation and Maintenance Manuals
- Signed Bill of Sale and Warranty Agreement
- Title Commitment (if applicable)
- Special Warranty Deed (if applicable)

If any of the materials above are not included in the submission, please provide reason: _____

Total amount of District Eligible Costs requested for reimbursement: \$ _____

By its signature below, Applicant certifies that this Application for Acceptance of Improvements and all documents submitted in support of this application are true and correct, and that the Applicant is authorized to sign this application and convey the Improvements set forth in this application to Mountain Brook Metropolitan District, free and clear of any liens or encumbrances whatsoever, in accordance with the Improvement Acquisition, Advance and Reimbursement Agreement with the District.

Signature: _____

Date: _____

EXHIBIT C
(To Improvement Acquisition, Advance and Reimbursement Agreement)

FORM OF SUBORDINATE PROMISSORY NOTE

MOUNTAIN BROOK METROPOLITAN DISTRICT
REVENUE AND LIMITED TAX OBLIGATION
SUBORDINATE PROMISSORY NOTE

PRINCIPAL AMOUNT: Up to an amount not to exceed Nine Million Dollars (\$9,000,000)

INTEREST RATE: At a rate not to exceed the Federal Reserve Prime Rate as published in the Wall Street Journal plus 1%

DATED: August 24, 2020

REGISTERED OWNER: Mountain Brook Partners, LLC (“MBP”)

MATURITY DATE: December 31, 2020

Mountain Brook Metropolitan District (the “District”), a body corporate, politic and a political subdivision organized under the laws of the State of Colorado, for the value received, hereby promises to pay, but solely and only from, and contingent upon receipt of, the sources hereinafter described, the principal sum stated above (or such lesser amount as may be shown as advanced hereunder as set forth in Schedule “A” attached hereto) together with interest at the rate stated above, which interest shall accrue on said principal sum from and after the date hereof to the maturity date hereof, in lawful money of the United States of America to the registered owner named above or registered assigns, on the maturity date stated above unless this Note shall be prepaid in full, in which case on such payment date.

In any case where the date of maturity for payment of interest and principal on this Note or the date fixed for prepayment hereof shall be a Saturday or Sunday, a legal holiday or a day on which banking institutions in the city or town of payment are authorized by law to close, then payment of interest and/or principal or prepayment price shall be made on the immediately following business day with the same force and effect as if made on the date of maturity or the date fixed for prepayment. Prior to the Maturity Date, and at such time as the District has available funds, this Note may be prepaid, in whole or in part, at any time without redemption premium or other penalty, but with interest accrued on the principal amount prepaid, up to and including the date of prepayment. Any and all prepayments shall first be applied to unpaid accrued interest, then to the principal amount outstanding on this Note. This Note shall be paid in full from the sources hereinafter described prior to the payment of any other obligation of the District that may have a claim on such revenues and would otherwise be available for the payment of this Note as further described herein, other than current operation and maintenance expenses and other budgeted general fund expenditures of the District, and as further provided and limited herein.

This Note is executed, issued and delivered to MBP pursuant to that certain Improvement Acquisition, Advance and Reimbursement Agreement entered into between the District and MBP, dated August 24, 2020 (the “Agreement”), the terms of which are hereby incorporated by

reference, to evidence the repayment obligation of the District with respect to certain indebtedness owed to MBP.

Pursuant to the Agreement, the District is obligated to repay both the principal amount of this Note and any and all interest accrued thereon, from the revenue sources and in the manner specified in the Agreement, contingent upon the receipt of such funds from said revenue sources, subject to any restrictions provided in the Agreement, Service Plan and electoral authorization; and further *provided, that any such repayment shall be subject to the annual appropriation of funds by the District and shall be subject to the terms and conditions of, and such repayment obligations shall be subordinate to, the Bonds (as such term is defined in the Agreement) and any refundings thereof, and the provisions of any bond resolution, indenture, pledge agreement, loan document and/or any other document related thereto; and further provided that any mill levy certified by the District for the purpose of repaying advances made hereunder shall not be higher than the Service Plan mill levy cap, as it now exists or may be amended from time to time as provided therein. In no event shall the District impose a mill levy in excess of 50 mills for the repayment of this Note.*

Failure by the District to repay MBP as a result of insufficient funds shall not constitute a default hereunder, nor subject the District to any claims and/or causes of action by MBP, including mechanic's liens, arising out of the District's nonperformance of its payment obligation. Failure by the District to make a payment of principal or interest due on the Note shall not cause or permit acceleration thereof; rather, the Note shall continue to bear interest at the rate and manner specified herein.

Upon acceptance of any Certified District Eligible Costs (as defined in the Agreement) by the District and upon each advance made to, or approved expenditure made on behalf of, the District by MBP pursuant to the Agreement, including Organization Costs, the District shall indicate on Schedule "A" of this Note: (i) the amount of Certified District Eligible Costs accepted by the District or funds advanced to or expended on behalf of the District; (ii) the date of the advance or expenditure; (iii) the total funds accepted, advanced and/or expended to date under the Note; and (iv) the total unpaid accrued interest due thereon. Any payments made on the Note by the District shall also be evidenced on Schedule "A" attached hereto.

Neither the Board of Directors of the District, nor any person executing this Note, shall be personally liable hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

This Note is issued pursuant to and in full compliance with the Constitution and laws of the State of Colorado. All issues arising hereunder shall be governed by the laws of Colorado.

This Note is issued pursuant to the Supplemental Public Securities Act, Section 11-57-201, *et seq.*, C.R.S., as amended.

THIS NOTE IS A SPECIAL, LIMITED OBLIGATION OF THE DISTRICT AND SHALL BE PAYABLE SOLELY FROM CERTAIN REVENUES SPECIFIED IN THE AGREEMENT. THIS NOTE SHALL NOT CONSTITUTE A DEBT OR OBLIGATION

OF THE STATE OF COLORADO OR BOULDER COUNTY, COLORADO. MBP SHALL HAVE NO RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF COLORADO OR BOULDER COUNTY TO PAY THIS NOTE OR THE INTEREST THEREON, NOR TO ENFORCE PAYMENT OF THE SAME AGAINST THE PROPERTY OF THE STATE OF COLORADO OR BOULDER COUNTY, NOR SHALL THIS NOTE CONSTITUTE A CHARGE, LIEN OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE STATE OF COLORADO OR BOULDER COUNTY.

BY ITS ACCEPTANCE HEREOF, MBP ACKNOWLEDGES THAT THE DISTRICT AND ITS OFFICERS, ATTORNEYS, EMPLOYEES OR AGENTS NEITHER MAKE, NOR HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE PROPER TREATMENT FOR FEDERAL, STATE AND/OR LOCAL INCOME TAX PURPOSES OF THE INTEREST PAYABLE HEREUNDER.

The District waives demand, presentment, and notice of dishonor and protest with respect to any payment due hereunder. No waiver of any payment or other right under this Note shall operate as a waiver of any other payment or right, including right of offset. If MBP enforces this Note upon default, the District shall pay or reimburse MBP for reasonable expenses incurred in the collection hereof or in the realization of any security hereof, including reasonable attorney's fees.

Notwithstanding any provision herein, or in any instrument now or hereafter securing the obligation of the District specified herein, the total liability for payments in the nature of interest shall not exceed the limit now imposed by the usury laws of the State of Colorado.

This Note shall not be transferable, negotiable, assigned or otherwise payable to any party.

If, for any reason, this Note is determined to be invalid or unenforceable (except in the case of fraud by MBP in connection therewith), the District shall issue a new promissory note to MBP that is legally enforceable. Said new promissory note shall evidence the District's obligation to repay all amounts due hereunder.

It is hereby certified, recited and declared that all conditions, acts and things required to exist or occur by the Constitution or statutes of the State of Colorado, currently exist and either occurred prior to, or in connection with, the issuance of this Note.

By signing in the space provided below, the District hereby acknowledges and agrees that this Note shall be irrevocable for all purposes and shall be binding upon the District, subject to the provisions herein and the provisions of the Agreement. This Note may not be terminated orally, but only by payments in full or by a written discharge signed by the owner and holder of this Note. Notwithstanding the foregoing, MBP acknowledges that the District's obligations hereunder shall terminate on the date that is forty (40) years after the execution date hereof, even if any portion of the principal sum remains unpaid and outstanding.

IN WITNESS WHEREOF, the District has caused this Note to be executed, in its name and on its behalf, by its President and attested by a designated representative of the District, with an imprint of the District's seal affixed hereon.

**MOUNTAIN BROOK METROPOLITAN
DISTRICT**

(S E A L)

By: **EXHIBIT FORM – DO NOT SIGN**
President

ATTEST:

EXHIBIT FORM – DO NOT SIGN
Secretary

SCHEDULE A

**EXHIBIT B
(To Resolution)**

Subordinate Promissory Note

MOUNTAIN BROOK METROPOLITAN DISTRICT
REVENUE AND LIMITED TAX OBLIGATION
SUBORDINATE PROMISSORY NOTE

PRINCIPAL AMOUNT: Up to an amount not to exceed Nine Million Dollars (\$9,000,000)

INTEREST RATE: At a rate not to exceed the Federal Reserve Prime Rate as published in the Wall Street Journal plus 1%

DATED: August 24, 2020

REGISTERED OWNER: Mountain Brook Partners, LLC (“MBP”)

MATURITY DATE: December 31, 2020

Mountain Brook Metropolitan District (the “District”), a body corporate, politic and a political subdivision organized under the laws of the State of Colorado, for the value received, hereby promises to pay, but solely and only from, and contingent upon receipt of, the sources hereinafter described, the principal sum stated above (or such lesser amount as may be shown as advanced hereunder as set forth in Schedule “A” attached hereto) together with interest at the rate stated above, which interest shall accrue on said principal sum from and after the date hereof to the maturity date hereof, in lawful money of the United States of America to the registered owner named above or registered assigns, on the maturity date stated above unless this Note shall be prepaid in full, in which case on such payment date.

In any case where the date of maturity for payment of interest and principal on this Note or the date fixed for prepayment hereof shall be a Saturday or Sunday, a legal holiday or a day on which banking institutions in the city or town of payment are authorized by law to close, then payment of interest and/or principal or prepayment price shall be made on the immediately following business day with the same force and effect as if made on the date of maturity or the date fixed for prepayment. Prior to the Maturity Date, and at such time as the District has available funds, this Note may be prepaid, in whole or in part, at any time without redemption premium or other penalty, but with interest accrued on the principal amount prepaid, up to and including the date of prepayment. Any and all prepayments shall first be applied to unpaid accrued interest, then to the principal amount outstanding on this Note. This Note shall be paid in full from the sources hereinafter described prior to the payment of any other obligation of the District that may have a claim on such revenues and would otherwise be available for the payment of this Note as further described herein, other than current operation and maintenance expenses and other budgeted general fund expenditures of the District, and as further provided and limited herein.

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Notwithstanding any provision herein, or in any instrument now or hereafter securing the obligation of the District specified herein, the total liability for payments in the nature of interest shall not exceed the limit now imposed by the usury laws of the State of Colorado.

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If, for any reason, this Note is determined to be invalid or unenforceable (except in the case of fraud by MBP in connection therewith), the District shall issue a new promissory note to MBP that is legally enforceable. Said new promissory note shall evidence the District's obligation to repay all amounts due hereunder.

It is hereby certified, recited and declared that all conditions, acts and things required to exist or occur by the Constitution or statutes of the State of Colorado, currently exist and either occurred prior to, or in connection with, the issuance of this Note.

By signing in the space provided below, the District hereby acknowledges and agrees that this Note shall be irrevocable for all purposes and shall be binding upon the District, subject to the provisions herein and the provisions of the Agreement. This Note may not be terminated orally, but only by payments in full or by a written discharge signed by the owner and holder of this Note. Notwithstanding the foregoing, MBP acknowledges that the District's obligations hereunder shall terminate on the date that is forty (40) years after the execution date hereof, even if any portion of the principal sum remains unpaid and outstanding.

IN WITNESS WHEREOF, the District has caused this Note to be executed, in its name and on its behalf, by its President and attested by a designated representative of the District, with an imprint of the District's seal affixed hereon.



MOUNTAIN BROOK METROPOLITAN DISTRICT

By: Kevin Mulshine
Its: President

ATTEST:

By: Alan D. Payne
Its: GENERAL COUNSEL

Signature page to Mountain Brook Subordinate Promissory Note to Improvement Acquisition, Advance and Reimbursement Agreement

SCHEDULE A