

OPERATIONS, MANAGEMENT, AND MAINTENANCE AGREEMENT
BETWEEN
SWEETGRASS METROPOLITAN DISTRICT NO. 1
AND
SWEETGRASS MASTER ASSOCIATION No. 2, INC.
(Amenity Area)

This Agreement is made and entered into as of the 1st day of November, 2016, by and between Sweetgrass Metropolitan District No. 1 through its Board of Directors (hereinafter called the "District"), a Colorado quasi-municipal corporation, and the Sweetgrass Master Association No. 2, Inc. (hereinafter called the "Association"), a Colorado nonprofit corporation.

RECITALS

WHEREAS, the District is a Title 32 special district organized pursuant to the laws of the State of Colorado in order to construct, provide, operate and maintain certain public improvement and other services for itself and Sweetgrass Metropolitan District Nos. 2 and 3 ("District Nos. 2 and 3") in accordance with a the Consolidated Service Plan, as may be amended (the "Service Plan"); approved by the City of Dacono (the "City"), and

WHEREAS, pursuant to Section 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts and agreements affecting the affairs of the District; and

WHEREAS, the District and District Nos. 2 and 3 have entered into a District Facilities Construction and Services Agreement ("Master IGA") whereby the District has agreed to perform the services contemplated in the Service Plan for the benefit of District Nos. 2 and 3, and District Nos. 2 and 3 have agreed to finance and pay for the costs associated with such services; and

WHEREAS, the District has the authority to incur indebtedness through the issuance of bonds or by the execution of contracts to obtain funds for the acquisition, construction, installation or completing of facilities and improvements in order to carry out the objectives and purposes of the Districts, and are both authorized to issue bonds to be repaid from legally available revenues of the Districts; and

WHEREAS, District Nos. 2 and 3 anticipate the issuance of general obligation indebtedness (the "Bonds") which will provide public funding to finance the construction and provision of certain public improvements including, but not limited to, a pool, related pool structures and amenities, amenity center building, pool maintenance buildings, and all adjacent landscaping, walkways, and parking areas (collectively the "Amenity Area" as more fully described in **Exhibit A** attached hereto) as generally described herein, in the Service Plan, and in the Association's Master Declaration of Covenants, Conditions, and Restrictions (the "Covenants"); and

WHEREAS, due to the use of public funding to finance the Amenity Area's construction, the District expects to maintain ownership of or other permissible and required interest ("Ownership") in the Amenity Area until such time as the Bonds associated therewith and used for said financing thereof is discharged or until such other time when Ownership is no longer required to preserve the tax-exempt nature of the Bonds as determined by the District; and

WHEREAS, during the period of required District Ownership, and until such time as fee title in the Amenity Area is transferred to the Association, the District, in consideration for granting the Association and the adjacent Sweetgrass Master Association, Inc. ("Association No. 1") access to and use thereof, desires that the Association perform and undertake the operation,

maintenance and other management services and pay the annual costs thereof as necessary to ensure successful Amenity Area operations; and

WHEREAS, the Association, in consideration for the right to have access to and use of the Amenity Area by and for its members as well as for the members of Association No. 1, is willing to perform and pay the costs of said operation, maintenance and management services as further described herein, which costs shall be shared by the Association No. 1 pursuant to a certain Operating Agreement For Shared Pool Facility entered into between the Association and Association No. 1 (" Shared Facilities Agreement").

NOW THEREFORE, in consideration of the mutual covenants and promises expressed herein, the receipt and sufficiency of which are hereby acknowledged, the Association and the District hereby agree as follows:

COVENANTS AND AGREEMENTS

1. The District funded the Amenity Area's construction, owns the Amenity Area, and the Amenity Area will be operated, maintained and managed by the Association.
2. The District grants the Association non-exclusive access to and right of full use thereof by its members, authorized guests and to the general public as discussed herein.
3. The Association, in exchange for Amenity Area access to and the right of full use thereof together with the access to and the right to full use thereof by Association No. 1, shall, at its own cost without recourse to the District, perform to the reasonable satisfaction of the District, any and all necessary functions associated therewith including, but not limited to the management, operation, maintenance, care for, general upkeep, repair and replacement, and shall keep the same in a safe, attractive and desirable condition for all authorized users. The Association shall have the right to delegate its responsibilities under this Agreement to its employees or to engage independent contractors for performance of any part of the services to be provided hereunder, and shall notify the District if such delegation is undertaken and it shall have the right to require the Association No. 1 to share in the costs thereof pursuant to the Shared Facilities Agreement.

The Association shall be responsible for all maintenance, repair and replacement responsibilities including all maintenance required to maintain the Amenity Area in a manner suitable and efficient for public use, and in accordance with the standard set forth herein, including but not limited to, a preventative maintenance program, and a management of capital repairs. In connection therewith, it shall be further required that the Association perform all services required to keep the Amenity Area in good repair and good operating condition, including all repairs thereto and renewals and replacements thereof necessary for such purpose. The Association shall perform any such maintenance and operations to the reasonable satisfaction of the District. The Association shall comply with any applicable governmental laws in connection with the maintenance, operation and use of the Amenity Area.

In accordance with Section 19 hereof, if the Association fails or otherwise refuses to make reasonable repairs or replacements, which are required hereby or deemed necessary by the District, the District may make such reasonable and necessary repairs or replacements and charge the actual costs thereof to the Association. Such expenditures, or any other expenditures that are the Association's responsibility, and incurred by the District shall be reimbursed by the Association on demand, together with interest at the rate of eight percent per annum from the date of expenditure by the District.

4. The District shall transfer fee title in the Amenity Area to the Association when the District's Ownership thereof is no longer required to preserve the tax-exempt nature of the Bonds or said bonds are discharged. The Association agrees that until such time when the District transfers fee title in the Amenity Area to the Association, the Amenity Area shall be made available for use by the general public including those who are neither members of the Association, Association No. 1 nor residents of or property owners within Sweetgrass Metropolitan District No. 2 ("nonresidents"). The Parties acknowledge, however, that nonresident use may be reasonably limited and eliminated to ensure the health, safety and welfare of resident and property owner users, with District No. 2's residents and property owners, along with Association and Association No. 1 members, receiving priority over nonresidents at all times. Nonresidents, when granted access, must pay a reasonable and comparable fee, plus an administrative component, to access and use the Amenity Area. Said fee is to be determined by the District such that it is comparable to what residents pay in property taxes and fees for the costs related to the Amenity Area's construction and annual operations. Under no circumstances shall nonresidents, if granted use, be entitled or claim entitlement to future Amenity Area use.

5. The Association shall, at its own expense, obtain and keep in full force and effect at all times, to the extent reasonably available, insurance, in the amounts and satisfying the requirements set forth in its Covenants, for liability arising out of and covering the services rendered thereby under this Agreement. Any and all such insurance required by the Association under this Agreement shall be primary and name the District as an additional insured.

The District shall obtain and keep in force its own general liability insurance plus structural/property insurance coverage for the Amenity Area. The Association agrees to reimburse the District the actual insurance costs incurred by the District that reasonably relate to the Amenity Area and the structural/property insuring thereof while this Agreement is in effect. Annually the District will make a reimbursement request to the Association, and the Association will make such reimbursement within thirty (30) days therefrom. The Association shall have the right to require the Association No. 1 to share in such reimbursement pursuant to the Shared Facilities Agreement.

6. The Association shall furnish whatever information is requested by the District for the purpose of establishing the placement of insurance coverage and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder. The Association must obtain the District's written permission to waive any of the insurance requirements contained herein. The Association shall obtain and keep on file a Certificate of Insurance, which shows the District as an additional insured.

7. In further consideration for the access to and rights of full use granted hereby, the Association agrees to indemnify and hold the District, its directors, employees, and agents harmless from and against any and all liability to third parties, known or unknown, foreseen or unforeseen, and from any and all claims, suits, proceedings, injuries, damages, losses, costs and expenses, including, but not limited to, attorney's fees and disbursements (collectively the "claims") asserted against or incurred by the District, its directors, employees, and agents which may arise during the term hereof to the extent such claims arise out of the Association's activities and services in connection with carrying out its obligations set forth herein; except that any such indemnification shall not extend to any liability arising out of negligent actions or inactions of the District.

The Association agrees to keep the Amenity Area and any repairs thereto and replacements thereof free from any and all liens and encumbrances. If the Association fails to pay any such claims or discharge any liens, the District may do so and collect all reasonable costs associated therewith from the Association plus interest at the rate of eight percent per annum from the date expended by the District and such amounts owing shall be payable on demand.

8. In compliance with Internal Revenue Service regulations regarding qualified management contracts, the term of this Agreement shall begin as of the date hereof and shall not be longer than the lesser of 30 years or 80% of the expected economic life of the Amenity Area, including renewals, being December 31, 2045 (the "Termination Date"). This Agreement shall terminate automatically if, at any time, fee title to the improvements vests in an entity other than the District or District No. 2 during the anticipated term of this Agreement. This Agreement may be terminated prior to the Termination Date at the discretion of the District for cause and the Association's failure to cure as provided herein upon delivery of written notice sixty (60) days in advance to the Association. There shall be no recourse by the Association in the event of District's determination to terminate this Agreement.

9. Any notices, demands, or other communications required or permitted to be given in writing hereunder shall be delivered personally or sent by fax, registered mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below, or at such other address as either party may hereafter or from time to time designate by written notice to the other party given in accordance herewith. Notice shall be considered given when personally delivered or mailed and shall be considered received by the party to whom it is addressed on the third day after such notice is given.

District C/o White Bear Ankele Tanaka & Waldron Professional Corporation 2154 E. Commons Avenue #200 Centennial, CO 80122	Association Sweetgrass Master Association No. 2, Inc. 2500 Arapahoe Ave., Suite 220 Boulder, CO 80302
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10. This Agreement may not be assigned in whole or in part by one party without the prior written consent of the other party, which consent may not be unreasonably withheld, except it is expressly acknowledged and agreed that the District may assign this Agreement to Sweetgrass Metropolitan District No. 2 without any requiring any further consent. Any assignment or attempted assignment in violation of this provision shall be null and void. Notwithstanding the foregoing, this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

11. If any clauses or provisions of this Agreement shall be adjudged to be invalid and unenforceable by a court of competent jurisdiction or by operation of any law, such clauses or provisions shall not affect the validity of this Agreement as a whole, or of the remaining clauses and provisions.

12. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

13. This Agreement constitutes the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.

14. This Agreement may be executed in counterparts and, as so executed, shall constitute one Agreement, binding on the parties even though the parties have not signed the same counterpart. Any counterpart of this Agreement that has attached to it separate signature pages, which altogether contain the signatures of all the parties, shall be deemed a fully executed instrument for all purposes.

15. In the event that any party hereto brings action or proceeding against the other party to enforce or interpret any of the conditions or provision of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney's fees and expenses and court costs associated with such action or proceeding.

16. At such time as the District determines that Ownership of the Amenity Area is no longer required relative to the Bonds to preserve the tax-exempt nature thereof, or as said Bonds are discharged, and so long as the District has not otherwise terminated this Agreement pursuant to the provisions herein, the District shall transfer fee title to the Amenity Area to the Association, in an "as is" condition, by warranty deed or other method agreed upon by the parties. The Association acknowledges and hereby agrees that it shall and must accept fee title to the Amenity Area in the "as is" condition from the District. Fee title will be transferred at no charge or fee in the District's recognition of the Association's satisfaction of its obligations hereunder.

17. The Association is and shall be considered an independent contractor under this Agreement. Nothing herein contained shall constitute or designate the Association or any of its employees or agents as employees or agents of the District, nor shall the Association be deemed or considered as a partner or agent of the District. The Association shall have full power and authority to select the means, manner and method of performing its duties under this Agreement without detailed control or direction of the District except as set forth herein. It shall be the Association's responsibility to pay its own costs, expenses and taxes incurred in connection with performance of this Agreement.

The Association shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the District in any manner except to the extent authorized or ratified by the Board of Directors of the District as reflected in the minutes from a board meeting. The Association shall have no right or interest in any of the District's assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the services contemplated herein. The Association shall at all times conform to reasonable policies as established and approved by or otherwise required by the District from time to time, of which the District provides reasonable notice to the Association.

18. The Association shall be deemed in default or breach of this Agreement if it fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement. If any known default/breach occurs, the Association shall notify the District immediately. The District may also serve the Association written notice of default/breach describing the nature thereof. The Association shall then commence and diligently thereafter continuously pursue the curing of the default/breach within ten (10) days after such notice or knowledge thereof is obtained, unless the circumstances dictate a lesser or greater time. If the Association does not cure any default/breach in accordance herewith, the District may pursue its remedies available at law or in equity, including specific performance and undertaking of the necessary action to cure the default/breach with right of indemnification of any such costs from the Association.

19. The District shall be deemed in default or breach of this Agreement if it fails to grant the Association and Association No. 1 access to and full use of the Amenity Area while it is required to be owned by the District or if the District fails to transfer fee title to the improvements as provided herein. If any known default/breach occurs, the Association shall provide written notice to the District describing the nature thereof. The District shall have ten (10) days after receipt of such notice to cure the default/breach or the Association may pursue its remedies available at law or in equity, including specific performance and undertaking of the necessary action to cure the default/breach with right of indemnification of any such costs.

20. Notwithstanding anything in this Agreement, which is or may appear to be the contrary, if the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions, labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay. The party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any such delay to the other party no later than seven (7) days after becoming aware of the same. Failure to provide proper notice shall prohibit the claiming party from availing itself to the provision for the extension of performance contained herein.

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

SWEETGRASS METROPOLITAN DISTRICT NO. 1

ATTEST:




Secretary

By: 

Jon R. Lee, President

SWEETGRASS MASTER ASSOCIATION NO. 2, INC.

By: 

Its: _____
Jon R. Lee, President

EXHIBIT A

GENERAL DESCRIPTION OF DISTRICT OWNED PUBLIC IMPROVEMENTS FOR
SWEETGRASS METROPOLITAN DISTRICT OWNED TRACT

Amenity Area Location – Sweetgrass Filing 1, Replat C, Outlot H

Amenity Area Components (including but not limited to) –

- Pool
- Pool Maintenance Building
- BBQ Area with Grills
- Parking Area
- Event Lawn
- Playground Equipment
- Benches
- Fabric Shade Structure
- Structures adjacent to pool area
- Landscaping
- Fencing