

**FUNDING AND REIMBURSEMENT AGREEMENT  
(Operations and Maintenance)**

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This **FUNDING AND REIMBURSEMENT AGREEMENT** (the “**Agreement**”) is made and entered into as of the 30<sup>th</sup> day of January, 2017, by and between **TUSCAN FOOTHILLS VILLAGE METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and **TFV1, LLC**, a Colorado limited liability company (the “**Developer**”).

**RECITALS**

WHEREAS, the District has been duly and validly organized as a quasi-municipal corporation and political subdivision of the State of Colorado, in accordance with the provisions of Article 1, Title 32, Colorado Revised Statutes (the “**Special District Act**”), with the power to provide certain public infrastructure, improvements and services, as described in the Special District Act, within and without its boundaries (collectively, the “**Public Infrastructure**”), as authorized and in accordance with the Service Plan for the District (the “**Service Plan**”); and

WHEREAS, the Developer has directed or intends to direct certain development activities or cause development activities to occur with respect to property included within and without the boundaries of the District (the “**Project**”), which depend upon the timely delivery of the Public Infrastructure; and

WHEREAS, the District has incurred and will incur costs in furtherance of the District’s permitted purposes, including but not limited to: costs in the nature of general operating, administrative and maintenance costs, such as attorney, engineering, architectural, surveying, district management, accounting, auditing, insurance, and other costs necessary to continued good standing under applicable law (the “**Costs**”); and

WHEREAS, the District does not presently have financial resources to provide funding for payment of Costs that are projected to be incurred prior to the anticipated availability of funds; and

WHEREAS, the District has determined that delay in the provision of the Public Infrastructure and the conduct of other service functions by the District will impair the ability to provide facilities and services necessary to support the Project on a timely basis; and

WHEREAS, the Developer is willing to loan funds to the District, from time to time, on the condition that the District agrees to repay such loans, in accordance with the terms set forth herein; and

WHEREAS, the District is willing to execute one or more reimbursement notes, bonds, or other instruments (“**Reimbursement Obligations**”), in an aggregate principal amount not to exceed the Maximum Loan Amount (as defined below), to be issued to or at the direction of the

Developer upon its request, subject to the terms and conditions hereof, to further evidence the District's obligation to repay the funds loaned hereunder; and

WHEREAS, the District anticipates repaying moneys advanced by the Developer hereunder, including as evidenced by any requested Reimbursement Obligations, with the proceeds of future bonds, ad valorem taxes, or other legally available revenues of the District determined to be available therefor; and

WHEREAS, the District and the Developer desire to enter into this Agreement for the purpose of consolidating all understandings and commitments between such parties relating to the funding and repayment of the Costs; and

WHEREAS, the Board of Directors of the District (the "**Board**") has determined that the best interests of the District and its property owners will be served by entering into this Agreement for the funding and reimbursement of the Costs; and

WHEREAS, the Board has authorized their officers to execute this Agreement and to take all other actions necessary and desirable to effectuate the purposes of this Agreement.

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

#### COVENANTS AND AGREEMENTS

1. Loan Amount and Term. The Developer agrees to loan to the District one or more sums of money, not to exceed the aggregate of \$50,000 per annum for four years, up to \$200,000 (as the same may be subsequently increased by agreement of the parties hereto and execution of a supplement or addendum to this Agreement) (the "**Maximum Loan Amount**"). These funds shall be loaned to the District in one or a series of installments and shall be available to the District through December 31, 2021 (as the same may be amended pursuant to an annual review evidenced by supplement or amendment hereto, the "**Loan Obligation Termination Date**"). Thereafter, the Developer may agree to renew its obligations hereunder on an annual basis by providing written notice thereof to the District, in which case the Loan Obligation Termination Date shall be amended to the date provided in such notice, which date shall not be earlier than December 31 of the succeeding year.

2. Prior Costs Incurred. The parties agree and acknowledge that the Developer has incurred Costs on behalf of the District prior to the execution of this Agreement in anticipation that the same would be reimbursed as provided herein (the "**Prior Costs**"). A summary of the Prior Costs is attached hereto, and incorporated herein by this reference ("**Exhibit A**") Reimbursement for Prior Costs shall be made in accordance with, and subject to the terms and conditions of this Agreement governing the reimbursement for Costs, except that any Prior Costs reimbursed in accordance with this Agreement shall not be included in the calculation of the Maximum Loan Amount under Section 1 of this Agreement.

3. Use of Funds. The District agrees that it shall apply all funds loaned by the Developer under this Agreement solely to Costs of the District as set forth from time to time in the annual adopted budget for the District, and pursuant to any contracts entered into with third parties to perform functions for the District under such adopted budget. It is understood that the District has budgeted or will budget as revenue from year to year the entire aggregate amount which may be borrowed hereunder to enable the District to appropriate revenues to pay the Costs included within the District's annual budget. The Developer shall be entitled to a quarterly accounting of the expenditures made by the District, upon request, and otherwise may request specific information concerning such expenditures at reasonable times and upon reasonable notice to the District.

4. Manner for Requesting Advances.

a. The District shall from time to time determine the amount of revenue required to fund budgeted expenditures by the District, but such determination shall be made not more often than monthly. Each determination shall be made based upon the expenditures contained in the adopted budget for the District and upon the rate of expenditures estimated for the next succeeding month. Not less than fifteen (15) days before the beginning of each month, the District shall notify the Developer of the requested advance for the next month, and the Developer shall deposit such advance on or before the beginning of that month. The parties may vary from this schedule upon mutual agreement.

b. Upon receipt of advances hereunder, the District shall keep a record of such advances made. Failure to record such advances shall not affect inclusion of such amounts as reimbursable amounts hereunder; provided that such advances are substantiated by the District's accountant. The Developer may provide any relevant documentation evidencing such unrecorded advance to assist in the District's final determination.

5. Obligations Irrevocable.

a. The obligations created by this Agreement are absolute, irrevocable, unconditional, and are not subject to setoff or counterclaim.

b. The Developer shall not take any action which would delay or impair the District's ability to receive the funds contemplated herein with sufficient time to properly pay approved invoices and/or notices of payment due.

6. Interest Prior to Issuance of Reimbursement Obligations. With respect to each loan advance made under this Agreement prior to the issuance of a Reimbursement Obligation reflecting such advance, the interest rate shall be **6.5% per annum**, from the date any such advance is made, **simple interest**, to the earlier of the date the Reimbursement Obligation is issued to evidence such advance, or the date of repayment of such amount. Upon issuance of any such Reimbursement Obligation, unless otherwise consented to by the Developer, any interest then accrued on any previously advanced amount shall be added to the amount of loan advance and reflected as principal of the Reimbursement Obligation, and shall thereafter accrue interest as provided in such Reimbursement Obligation.

7. Terms of Repayment; Source of Revenues.

a. Any funds advanced hereunder shall be repaid in accordance with the terms of this Agreement. The District intends to repay any advances for Costs from ad valorem taxes, fees, or other legally available revenues of the District, net of any debt service or current operations and maintenance costs of the District. Any mill levy certified by the District for the purpose of repaying advances made hereunder shall not exceed 50 mills and shall be further subject to any restrictions provided in the District's Service Plan, electoral authorization, or any applicable laws.

b. The provision for repayment of advances made hereunder, as set forth in Section 7(a) hereof, shall be at all times subject to annual appropriation by the District.

c. At such time as the District issues Reimbursement Obligations to evidence an obligation to repay advances made under this Agreement, the repayment terms of such Reimbursement Obligation shall control and supersede any otherwise applicable provision of this Agreement, except for the Maximum Reimbursement Obligation Repayment Term (as defined below).

8. Issuance of Reimbursement Obligations.

a. Subject to the conditions of this Section 8 and Section 9 hereof, upon request of the Developer, the District hereby agrees to issue to or at the direction of the Developer one or more Reimbursement Obligations to evidence any repayment obligation of the District then existing with respect to advances made under this Agreement. Such Reimbursement Obligations shall be payable solely from the sources identified in the Reimbursement Obligations, including, but not limited to, *ad valorem* property tax revenues of the District, and shall be secured by the District's pledge to apply such revenues as required hereunder, unless otherwise consented to by the Developer. Such Reimbursement Obligations shall mature on a date or dates, subject to the limitation set forth in the Maximum Reimbursement Obligation Repayment Term defined herein, and bear interest at a market rate, to be determined at the time of issuance of such Reimbursement Obligations. The District shall be permitted to prepay a Reimbursement Obligation, in whole or in part, at any time without redemption premium or other penalty, but with interest accrued to the date of prepayment on the principal amount prepaid. The District and the Developer shall negotiate in good faith the final terms and conditions of the Reimbursement Obligations.

b. The term for repayment of any Reimbursement Obligation issued under this Agreement shall not extend beyond thirty (30) years from the date of this Agreement ("**Maximum Reimbursement Obligation Repayment Term**").

c. The issuance of any Reimbursement Obligation shall be subject to the availability of an exemption from the registration requirements of § 11-59-106, C.R.S., and shall be subject to such prior filings with the Colorado State Securities Commissioner as may be

necessary to claim such exemption, in accordance with § 11-59-110, C.R.S., and any regulations promulgated thereunder.

d. In connection with the issuance of any such Reimbursement Obligation, the District shall make such filings as it may deem necessary to comply with the provisions of § 32-1-1604, C.R.S., as amended.

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

f. If, for any reason, a Reimbursement Obligation is determined to be invalid or unenforceable, the issuing District shall issue a new Reimbursement Obligation to the Developer that is legally enforceable, subject to the provisions of this Section 8.

g. In the event that it is determined that payments of all or any portion of interest on a Reimbursement Obligation 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, upon request of the Developer, to take all action reasonably necessary to satisfy the applicable provisions of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

9. No Debt. It is hereby agreed and acknowledged that this Agreement evidences the District's intent to repay the Developer for advances made hereunder in accordance with the terms hereof. However, this Agreement shall not constitute a debt or indebtedness by the District within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple-fiscal-year financial obligation. Further, the provision for repayment of advances made hereunder, as set forth in Section 7 hereof, and the agreement to issue a Reimbursement Obligation as set forth in Section 8 hereof, shall be at all times subject to annual appropriation by the District, in its absolute discretion.

10. **Termination.**

a. The Developer's obligations to advance funds to the District in accordance with this Agreement shall terminate on December 31, 2021, (subject to the extension terms above), except to the extent advance requests have been made to the Developer that are pending by this termination date, in which case said pending request(s) will be honored notwithstanding the passage of the termination date.

b. The District's obligations hereunder shall terminate at the earlier of the repayment in full of the Maximum Loan Amount (or such lesser amount advanced hereunder if it is determined by the District that no further advances shall be required hereunder) or thirty years

from the execution date hereof. After thirty years from the execution of this Agreement, the Parties hereby agree and acknowledge that any obligation created by this Agreement which remains due and outstanding under this Agreement, including accrued interest, is forgiven in its entirety, generally and unconditionally released, waived, acquitted and forever discharged, and shall be deemed a contribution to the District by the Developer, and there shall be no further obligation of the District to pay or reimburse the Developer with respect to such amounts.

11. Time Is of the Essence. Time is of the essence hereof; provided, however, that if the last day permitted or otherwise determined for the performance of any required act 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.

12. Notices and Place for Payments. All notices, demands and communications (collectively, "**Notices**") under this Agreement shall be delivered or sent by: (a) first class, registered or certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight carrier, addressed to the address of the intended recipient set forth below or such other address as either party may designate by notice pursuant to this Paragraph, or (c) sent by confirmed facsimile transmission, PDF or email. Notices shall be deemed given either one business day after delivery to the overnight carrier, three days after being mailed as provided in clause (a) above, or upon confirmed delivery as provided in clause (c) above.

If to the District:

Tuscan Foothills Village Metropolitan District  
c/o White Bear Ankele Tanaka & Waldron  
Attention: Blair M. Dickhoner, Esq.  
2154 East Commons Avenue, Suite 2000  
Centennial, Colorado 80122  
303.858.1800 (phone)  
303.858.1801 (fax)  
bdickhoner@wbapc.com

If to the Developer:

TFV1, LLC  
Attention: John M. Stinar  
121 E. Vermijo Avenue, Suite 200  
Colorado Springs, CO 80903

13. Amendments. This Agreement may only be amended or modified by a writing executed by both the District and the Developer.

14. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

15. Applicable Laws. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located.

16. Assignment. This Agreement may not be assigned by the District without the express prior written consent of the other party, and any attempt to assign this Agreement in violation hereof shall be null and void.

17. Authority. By execution hereof, the District and the Developer 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.

18. Entire Agreement. This Agreement constitutes and represents the entire, integrated agreement between the District and the Developer with respect to the matters set forth herein 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 of full execution hereof.

19. 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 the Developer's privileges and rights under this Agreement.

20. 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.

21. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being acknowledged that each party has contributed substantially and materially to the preparation of this Agreement.


22. Counterpart Execution. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Assignment.

**DISTRICT:**

**TUSCAN FOOTHILLS VILLAGE  
METROPOLITAN DISTRICT**, a quasi-  
municipal corporation and political subdivision of  
the State of Colorado

By:   
Officer of the District

**ATTEST:**

  
Secretary


**APPROVED AS TO FORM:**

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

  
General Counsel to the District

**DEVELOPER:**

TFV1, LLC, a Colorado limited liability company

By:   
Name: Kay M. Folan  
Title: President

*[Signature Page to Funding and Reimbursement Agreement]*



**EXHIBIT A**  
Prior Costs