

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (the “Cooperation Agreement”) dated as of _____, 2019 by and between the COLORADO SPRINGS URBAN RENEWAL AUTHORITY (“CSURA”), a body corporate and politic duly organized and existing as an urban renewal authority under the laws of the State of Colorado, and CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT (the “District”), a quasi-municipal corporation and political subdivision of the State of Colorado created pursuant to Title 31, Article 25, C.R.S., as amended.

WITNESSETH:

WHEREAS, CSURA and the City Council of the City of Colorado Springs, Colorado (“City”) have adopted an urban renewal plan known as the “South Nevada Avenue Area Urban Renewal Plan” (the “Urban Renewal Plan”) relating to an area along the South Nevada Avenue corridor as set forth in the Urban Renewal Plan (the “Urban Renewal Area”) under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et seq., C.R.S., as amended (the “Act”);

WHEREAS, in accordance with the Urban Renewal Plan and the Act, CSURA is authorized to undertake urban renewal projects and activities and to finance such projects and activities by utilization of certain incremental increases in property taxes and municipal sales taxes;

WHEREAS, CSURA and SNA Development LLC (“Developer”) entered into that certain Urban Renewal Agreement for Development of the South Nevada Avenue Area Urban Renewal Plan Area dated as of December 16, 2015, as amended by that certain First Amendment to Urban Renewal Agreement for Development of the South Nevada Avenue Area Urban Renewal Plan Area dated as of December 12, 2018, and supplemented by that certain Policy Regarding Allocation of Tax Increment Revenue Among Redevelopment Areas in the South Nevada Avenue Area Urban Renewal Plan Area (as the same may collectively be amended, supplemented, and modified from time to time, the “Development Agreement”) pursuant to which CSURA agreed to allocate and pledge the Pledged Revenues (as defined in the Development Agreement) to the Developer for the payment of costs of Public Improvements (as defined in the Development Agreement);

WHEREAS, subsequent to the execution of the Development Agreement, the Developer created the District in order to assist in the financing of the Public Improvements;

WHEREAS, the District will be responsible for the financing, acquisition, construction, completion, operation and maintenance of the Public Improvements to serve that portion of the property in the Urban Renewal Area which is within the boundaries of the District (“Benefitted Property”);

WHEREAS, the District is authorized to levy ad valorem taxes on real and personal taxable property within its boundaries to finance the Public Improvements for the Benefitted Property, to provide services and to conduct its operations;

WHEREAS, the District intends to issue its Limited Tax Supported and Special Revenue Bonds, Series 2019A (the “Series 2019A Bonds”) and its Limited Tax Supported and Special Revenue Subordinate Bonds, Series 2019B (the “Series 2019B Bonds”), and may issue other bonds or incur a loan or loans, which Series 2019A Bonds, Series 2019B Bonds, and other bonds or loans will obligate the District to utilize property taxes, tax increment revenues and other revenue for the construction, acquisition, completion, operation and maintenance of Public Improvements;

WHEREAS, the Series 2019A Bonds are being issued pursuant to a Trust Indenture (“Senior Indenture”) by and between the District and UMB Bank, n.a., as trustee (the “Trustee”), which Senior Indenture provides for the disbursement of funds from a Restricted Account (as defined in the Senior Indenture) for purposes of paying for Authority Public Improvements (as defined in the Senior Indenture), which disbursement is to occur pursuant to a Restricted Account Request (as defined in the Senior Indenture) to be signed by the District, the District’s accountant and CSURA’s accountant;

WHEREAS, the Series 2019B Bonds are being issued pursuant to a Trust Indenture (the “Subordinate Indenture”, and together with the Senior Indenture, the “ Indentures”) by and between the District and the Trustee;

WHEREAS, CSURA and the District are authorized by the Act to enter into cooperative agreements with respect to projects and activities;

WHEREAS, CSURA and the District desire to enter into an agreement setting forth their intent to cooperate as to the provision of the Public Improvements and to assure that the Pledged Revenues with respect to only property and sales within the boundaries of the District as such boundaries exist as of [April 19, 2019] (unless otherwise agreed to by CSURA) and no other portion of the Pledged Revenues (the “Pledged Tax Increment Revenues”) are made available for purposes of assisting in the financing of the Public Improvements for the Benefitted Property; and

WHEREAS, the Developer shall agree to the pledge hereunder of the Pledged Tax Increment Revenues (which comprise only that portion of the Pledged Revenues with respect to sales and property within the boundaries of the District as such boundaries exist as of [April 19, 2019], unless otherwise agreed to by the CSURA) by CSURA to the District in the form of the Consent of Developer attached hereto as Exhibit A.

NOW, THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, CSURA and the District hereby agree as follows:

1. Public Improvements. The District and CSURA hereby state their intentions to cooperate in providing the Public Improvements as may be desirable in order to serve the Benefitted Property. This statement of intention shall not obligate any party with respect to such Public Improvements and services which, without the Cooperation Agreement, would be the obligation of any other party hereto.

2. Pledge. In consideration of the District providing the Public Improvements, including the Authority Public Improvements (as defined in the Senior Indenture) and services to

the Benefitted Property, CSURA agrees that the Pledged Tax Increment Revenues shall, upon receipt by CSURA, be segregated and promptly paid to the District or to the Trustee, if requested by the District.

3. Specific Ownership Tax. CSURA agrees that any Property Tax TIF (as defined in the Development Agreement) revenues, which it receives as a result of the imposition of a specific ownership tax on vehicles under Section 42-3-101, et seq., C.R.S., in connection with any property tax levied by the District and which would otherwise be payable to the District, shall, upon receipt by CSURA, be segregated and promptly paid to the District, or a trustee with respect to the Bonds, if requested by the District.

4. CSURA Covenant Relating to Pledge of Amounts Owning. CSURA hereby covenants that so long as this Cooperation Agreement is in effect, it will not pledge or encumber the Pledged Tax Increment Revenues, but shall maintain the same for the use and benefit of the District and, upon receipt, shall promptly pay the same to the District, or a trustee with respect to the Bonds, if requested by the District. The covenant set forth in this paragraph shall include all revenues arising from any mill levy imposed by the District on real and personal taxable property for payment of operations and maintenance and debt as authorized by the Operating Plan or any subsequent amendments thereto.

5. Covenants of the District. The District shall apply all Pledged Tax Increment Revenues received from CSURA to obligations arising under and pursuant to the Indentures. The District will comply at all times with the terms and conditions of the Indentures and the other obligations under the Series 2019A Bonds and the Series 2019B Bonds. The District will cooperate with the Developer to enable the Developer to comply with the terms of the Developer Agreement and construct the Public Improvements described therein to the extent such Public Improvements relate to the Benefitted Property. The District acknowledges and agrees that this Agreement shall not be construed to limit the rights or obligations of CSURA or the Developer under the Development Agreement.

6. Litigation. Each of the parties agrees to promptly notify the other party hereto in writing of the pendency of any litigation involving this Cooperation Agreement in which any other party hereto is not a named party. Further, no party will object to or otherwise oppose any effort by another party hereto to intervene in any such litigation.

7. Notices. All notices or other communications hereunder shall be sufficiently given and shall be deemed given when provided by hand-delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, addressed to the following persons and addresses or at such other address or addresses as any party hereto shall designate in writing to the other parties hereto:

TO CSURA:

Colorado Springs Urban Renewal Authority
P.O. Box 1575 MC 528
Colorado Springs, CO 80901-1579

With copy to: Kraemer Kendall Rupp Deen Neville LLC
430 N. Tejon, Suite 300
Colorado Springs, CO 80903
Attention: David M. Neville, Esq.

TO THE DISTRICT: Creekwalk Marketplace Business Improvement District
90 South Cascade, Suite 1500
Colorado Springs, CO 80903
Attention: Danny Mientka

With copy to: Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203
Attention: Russ Dykstra, Esq.

8. Consent of Developer. This Cooperation Agreement shall not be effective until such time as the Developer has executed a consent (“Consent”) to the pledge of the Pledged Tax Increment Revenues to the District, in the form of the document attached hereto as Exhibit A.

9. Restricted Account Request. The District hereby agrees that it shall provide each completed Restricted Account Request, together with all necessary supporting documentation and information, under the Senior Indenture to CSURA and CSURA shall within ten (10) business days of receipt thereof, review such Restricted Account Request and either approve it and sign the request, or reject it, and provide in writing the reasons for such rejection. In the event that CSURA reasonably requests additional supporting documentation or information, the District shall promptly submit such additional documentation or information and CSURA’s time period for replying hereunder shall be extended accordingly.

10. Effective Date; Term. This Cooperation Agreement shall become effective as of the date set forth in the initial paragraph hereof, provided that the executed Consent has been delivered. Unless sooner terminated by mutual consent of the parties, this Cooperation Agreement shall remain in full force and effect until the payment in full of the indebtedness under the Indentures, at which time this Cooperation Agreement shall automatically terminate and be of no further force and effect.

11. Amendments and Waivers. No amendment or waiver of any provision of this Cooperation Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

12. Governing Law. This Cooperation Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

13. Headings. Paragraph headings in this Cooperation Agreement are included herein for convenience of reference only and shall not constitute a part of this Cooperation Agreement for any other purpose.

14. Severability. If any provision of this Cooperation Agreement is held by a court to be illegal, invalid, or unenforceable, the other provisions herein which are severable shall be unaffected. Furthermore, such illegal, invalid or unenforceable provision shall be automatically replaced with a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible to achieve the same or similar result and still be legal, valid and enforceable, and this Cooperation Agreement shall be deemed reformed accordingly.

15. No-Third Party Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties [and the Trustee] and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement[, except for the Trustee]. It is the express intention of the undersigned parties that any entity other than the undersigned parties [and the Trustee] shall be an incidental beneficiary only.

16. No Waiver of Immunities. Nothing contained herein shall be construed as a waiver, in whole or in part, by any party hereto of the rights, protections, and privileges afforded under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or under any other law, nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Cooperation Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

COLORADO SPRINGS URBAN RENEWAL
AUTHORITY

By: _____
Name: _____
Title: Chair

CREEKWALK MARKETPLACE BUSINESS
IMPROVEMENT DISTRICT

By: _____
Name: Danny Mientka
Title: President

EXHIBIT A

CONSENT OF DEVELOPER

This consent is furnished by SNA Development LLC (“Developer”) in connection with the Cooperation Agreement (“Agreement”) dated as of _____, 2019 by and between the Colorado Springs Urban Renewal Authority (“CSURA”) and the Creekwalk Marketplace Business Improvement District (“District”). (Capitalized terms used but not defined herein have their respective meanings set forth in the Agreement.)

Pursuant to the Development Agreement, the CSURA agreed to allocate and pledge Pledged Revenues to the Developer with respect to certain portions of the Urban Renewal Area. Since the date of the Development Agreement, the Developer created the District to assist in the payment and financing of the Public Improvements that will serve the Benefitted Property. Accordingly, the CSURA and the District entered into the Agreement to provide for the Pledged Tax Increment Revenues to be paid to the District for its use in connection with the financing of a portion of the Public Improvements.

The Developer acknowledges and agrees that (i) the Developer will benefit by the entry into the Agreement by the CSURA and the District, (ii) the Agreement will further the Developer’s objectives under the Development Agreement, and (iii) the Agreement will facilitate the Developer’s compliance with its obligations under the Development Agreement

The Developer hereby consents to the Agreement and the payment by CSURA pursuant thereto of the Pledged Tax Increment Revenues (which comprise only that portion of the Pledged Revenues with respect to sales and property within the boundaries of the District as such boundaries exist as of the date of the Agreement, unless otherwise agreed to by the CSURA) to the District, in lieu of payment to the Developer under the Development Agreement, for payment of a portion of the costs of the Public Improvements as provided for in the Agreement.

SNA DEVELOPMENT LLC

By: _____