

## **TIF REVENUE REIMBURSEMENT AGREEMENT**

**THIS TIF REVENUE REIMBURSEMENT AGREEMENT** ("Agreement") is made and entered into to be effective as of the \_\_\_ day of \_\_\_\_\_, 2019, by and between **CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("District"), and **SNA DEVELOPMENT LLC**, a Colorado limited liability company (the "Company") (collectively, the "Parties").

### **RECITALS**

WHEREAS, Company is the developer of certain property situate in the City of Colorado Springs, Colorado, intended to be utilized for new or redeveloped business or commercial development, located generally at the northwest corner of East Cheyenne Road and South Nevada Avenue, Colorado Springs, Colorado (the "Property"); and

WHEREAS, in order to serve the future property owners and tenants of the Property, certain public infrastructure improvements must be acquired, constructed or installed including but not limited to water services, safety protection devices, sanitation services, marketing, streetscape improvements, street improvements, curbs, gutters, culverts, drainage facilities, sidewalks, parking facilities, paving, lighting, grading, landscaping and storm and wastewater management facilities (the "Public Improvements"); and

WHEREAS, the District has committed in its Operating Plan, as the same was approved by the City of Colorado Springs and as the same may be amended from time to time (the "Operating Plan"), to fund, construct or acquire the majority of the Public Improvements which benefit the Property; and

WHEREAS, the Company is party to that certain Development Agreement between Company and the Colorado Springs Urban Renewal Authority ("CSURA") 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 so amended and supplemented, the "URA Agreement") pursuant to which Company is entitled to reimbursement of Reimbursable Project Costs and Excess Costs, as defined in the URA Agreement (together, "Reimbursable Project Costs" for purposes of this Agreement; and

WHEREAS, District is issuing its series 2019 tax exempt bonds ("Bonds") for the purpose of funding the construction and acquisition of the Public Improvements and the Reimbursable Project Costs, within and outside the District boundaries, in order to facilitate the development of the Property; and

WHEREAS, the CSURA and the District have pledged TIF revenues generated only from within the District boundaries on the date of this Agreement to repayment of the Bonds and TIF revenues generated outside of the District boundaries are available for Company reimbursement of Public Improvements constructed outside of the District boundaries; and

WHEREAS, the District and Company have determined and agreed that it is in the best interests of the District to establish a means by which: 1) Company shall certify to, and seek reimbursement from, CSURA the costs for the Reimbursable Project Costs which are funded and constructed by the District that are located outside of the District's boundaries, in accordance with the URA Agreement; and 2) Company will cause funds received by Company from CSURA for "4<sup>th</sup> silo" or as defined in the URA Agreement as "...TIF revenue that is not subject to a prior pledge pursuant to a development agreement..." ("Fourth Silo Funds") for the Reimbursable Project Costs located outside of the District's boundaries and constructed using Bond funds to be paid to the District for repayment of that portion of the Bonds used for construction and acquisition of the Reimbursable Project Costs and Excess Costs.

WHEREAS, the District and Company desire to set forth the procedures for the reimbursement of the Reimbursable Project Costs to District.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

### **COVENANTS AND AGREEMENTS**

1. Construction and Acquisition of Public Improvements. Public Improvements, as defined herein and as identified in Section 4 and Exhibit B of the URA Agreement, shall be constructed or acquired by District utilizing the Bond funds and other funds available to the District pursuant to its Operating Plan. District shall provide appropriate documentation and certifications as required to evidence the construction and acquisition of the Public Improvements constructed or acquired outside of the District boundaries pursuant to the URA Agreement and other agreements between the District and Company (the "Certifications").

2. Procedure for Reimbursement. Company agrees, that upon receipt of Certifications, Company shall submit the Certifications and such other information required pursuant to Section 7.2 or otherwise as required by the URA Agreement, to CSURA with a request for reimbursement of same from Fourth Silo Funds as either Reimbursable Project Costs or Excess Costs. To the extent Company or District are reimbursed directly by any third party for costs or expenses that would otherwise constitute Reimbursable Project Costs or Excess Costs, Company shall not submit such costs for reimbursement from CSURA. Upon receipt of funds from CSURA for the Reimbursable Project Costs or Excess Costs related to the Public Improvements built by the District outside of the District's boundaries, Company shall pay over such funds to District within thirty (30) days of receipt.

3. Dedication of Public Improvements. Public Improvements shall be dedicated as set forth in the Operating Plan.

4. Funding. The Parties agree that no payment shall be required of the Company pursuant to Section 2 hereof unless and until the Company receives reimbursement of same pursuant to the URA Agreement. The Parties agree that the District shall be reimbursed up to the amount of the total of actual cost of Public Improvements constructed by the District outside of the District boundaries. The District acknowledges and agrees that nothing herein shall constitute a pledge or encumbrance of Fourth Silo Funds or preclude future pledges or assignments of Fourth Silo Funds by Company consistent with the terms and conditions of the URA Agreement.

5. Representations. Company hereby represents and warrants to and for the benefit of the District:

A. That it has the full power and legal authority to enter into this Agreement;  
and

B. Neither the execution and delivery of this Agreement nor the compliance by Company with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which Company is a party or by which Company is or may be bound; and

C. Company has taken or performed all requisite acts or actions which may be required by the organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

These representations and warranties are made as of the date hereof and shall be deemed continually made by Company to District for the entire term of this Agreement.

6. Term. The term of this Agreement shall extend from the date hereof through and including the earlier of (i) reimbursement in full of any Reimbursable Project Costs or Excess Costs incurred by the District outside the boundaries of the District or (ii) December 31, 2035, unless terminated earlier by the mutual written agreement of the Parties.

7. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, via facsimile with a hard copy immediately following thereafter by United States mail, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Creekwalk Marketplace Business

Improvement District  
c/o Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
Attn: Russell W. Dykstra  
Phone: (303) 839-3800  
Fax: (303) 839-3838

To Company: SNA Development LLC  
90 South Cascade Avenue, Suite 1500  
Colorado Springs, CO 80903

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

8. Assignment. Company shall not assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the District, which may approve or reject such assignment in its sole and absolute discretion. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

9. Default/Remedies. In the event of a breach or default of this Agreement by either party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

10. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado, and any proceedings shall take place in El Paso County, Colorado and not elsewhere.

11. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

12. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

13. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and Company any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and Company shall be for the sole and exclusive benefit of the District and Company.

14. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

16. Conditions Precedent. The performance by Company of its obligations set forth herein shall constitute conditions precedent to the performance of the obligations of the District as set forth herein.

17. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

IN WITNESS WHEREOF, the Parties have executed this Facilities Funding and Reimbursement Agreement as of the day and year first set forth above.

**"Company"**  
SNA Development LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**"District"**  
CREEKWALK MARKETPLACE BUSINESS  
IMPROVEMENT DISTRICT,  
a quasi-municipal corporation and political  
subdivision of the State of Colorado

By: \_\_\_\_\_  
President

Attest:

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Secretary

**ACKNOWLEDGEMENT AND CONSENT**

In connection with the foregoing TIF Revenue Reimbursement Agreement (“Agreement”), the Colorado Springs Urban Renewal Authority (“CSURA”) hereby acknowledges as follows.

1. Capitalized terms used herein and not otherwise defined in the Agreement shall have the meanings set forth in the URA Agreement (as defined in the Agreement).

2. As of the date of the foregoing Agreement, to the actual knowledge of the undersigned (i) the URA Agreement is in full force and effect and has not been amended, assigned, modified, terminated or supplemented; (ii) the undersigned have not elected to terminate the URA Agreement; (iii) there are no material defaults existing under the URA Agreement; and (iv) there are no events or conditions which, with the giving of notice or passage of time, or both, would constitute a material default under the URA Agreement.

3. The provisions of the foregoing Agreement do not violate the terms of the URA Agreement and the payment of the TIF revenues to Company as described herein do not violate the terms of the URA Agreement and do not constitute a pledge of the TIF revenues outside of District boundaries available to the Company and Company has, upon compliance with the provisions of the URA Agreement, and subject to all of the terms and conditions thereof, the right to reimbursement for the Reimbursable Project Costs and Excess Costs to the extent same are incurred for Public Improvements constructed or acquired outside of the District Boundaries.

4. Nothing in the TIF Revenue Reimbursement Agreement or this Acknowledgement and Consent shall be deemed to (i) alter or amend the terms and conditions of the URA Agreement or limit the rights or remedies of CSURA thereunder, (ii) require CSURA to make any payment or incur any obligation in contravention of the terms and conditions of the URA Agreement or (iii) preclude any future pledge or beneficial use of Fourth Silo Funds by Company or any successor or assign for applications for the benefit of the South Nevada Urban Renewal Area outside the boundaries of the District.

Colorado Springs Urban Renewal Authority

By: \_\_\_\_\_  
Wynne Palermo, Chair

ATTEST:  
  
\_\_\_\_\_

