



Town of Frederick Board of Trustees Agenda

Frederick Town Hall
Board Chambers
401 Locust Street
Thursday, January 16, 2023

5:30 PM

Livestreaming of the Board of Trustees meetings have been transitioned to the Town of Frederick website. The livestream can be accessed at www.frederickco.gov/civicmedia

Public Comment will only be taken in person unless an accommodation is requested through the Town Clerk's Office. If you require an accommodation or have questions about making public comment please contact the Town Clerk's Office:

Meghan Martinez, Town Clerk
mmartinez@frederickco.gov
720-382-5500

Or

Kelly Green, Interim Deputy Town Clerk
kgreen@frederickco.gov
720-382-5500

Built on What Matters.



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Tracie Crites, Mayor

Chad teVelde, Trustee
Kevin Brown, Trustee
Windi Padia, Trustee

Public Finance Agreement between the Town of Frederick and Evergreen Devco, Inc. and Silverstone Metropolitan District No. 3

Agenda Date: Town Board Special Meeting – February 16, 2023

Attachments:

- a. Resolution
- b. Proposed Public Finance Agreement
- c. Ordinance
- d. Gap Analysis Report

Finance Review: _____
Finance Director

Submitted by: _____
Ryan Johnson
Assistant Town Manager

Approved for Presentation: _____
Bryan Ostler
Town Manager

☐ Quasi-Judicial

☒ Legislative

☐ Administrative

Strategic Plan Alignment:

- Community and Economic Vitality
 - 2.2 Continue implementing our retail attraction strategy to target regional destination opportunities, traditional and non-traditional grocers, and sit-down dining establishments.

Summary Statement:

This request is for approval of a proposed Public Finance Agreement and Ordinance No. 1384, as finalized by the Town Attorney and in substantially the same form as attached. This request is based on the previous direction of the Board of Trustees that this project is in harmony with the goals and objectives of the adopted Strategic Plan and Urban Renewal Plan.

Detail of Issue/Request:

Built on What Matters.

In 2015, the Town approved an urban renewal plan via Resolution 15-FURA-84 regarding this large commercially zoned parcel of land located at the northwest corner of Colorado Boulevard and Hwy 52. The intent has been to develop a retail shopping center aimed at serving the needs of the community primarily located in the southern portion of Frederick and the Carbon Valley on both sides of I-25.

Since that time, there has been little interest in developing this site according to those goals and objectives as the types of retail users needed to anchor a center required additional maturity in the population growth in order to justify locating in this area. In late 2020 and going in to 2021, the Town completed a retail sales tax leakage study. This study was aimed at quantifying potential areas where the Town could focus on attracting retail amenities given the ever-changing landscape in consumer demands and shopping preferences.

In 2021, the Town began work in earnest to attract a grocery anchored retail center. Based on the continued demand and growth from the residents in the community, Staff began working with Evergreen Devco, Inc. to bring this project to fruition. Additionally in 2021, the Town Board of Trustees adopted a 2021-2022 Strategic Plan that prioritized completing a retail attraction strategy. That plan also identified acquiring water as a potential resource to aid in the development of key economic development projects in the Town.

In 2022, Staff learned that Kroger had identified this site as a potential site for a King Soopers Marketplace store. The proposed project would include nearly all of the land incorporated inside the established urban renewal district boundaries as well as land outside of the urban renewal district boundaries west of William Bailey (See Exhibits A1, A-2 and A-3 in the Agreement). This proposed anchor would set the stage to then drive the need for additional supporting retail users throughout the site. To this end, the Town entered in to a Letter of Intent (LOI) outlining the framework of the potential project, which set forth the direction for Staff when negotiating the relevant agreements. During the latter portion of 2022, Staff worked with Evergreen to structure the project that was viable and would allow the project to move forward sooner rather than later.

This project truly is an example of a public-private-partnership as several entities including the Frederick Urban Renewal Authority, Town of Frederick, Silverstone Metropolitan District No. 3 and Evergreen are all playing a significant role in this project. For added measure, Staff engaged the services of the firm Short Elliott Hendrickson, Inc. (SEH) to conduct an outside review of the financial structure and confirm the funding shortfall for the project. This analysis has been attached by reference as Attachment C. Specifically, the core elements of the proposed agreement for consideration are outlined below:

- This project contemplates reducing the existing municipal sales tax rate of 3.5% within this boundary by 2.0% resulting in 1.5% remaining as the municipal sales tax rate within this project. Evergreen will propose adding a 2.0% Credit Public Improvement Fee (PIF) which would be collected and remitted back to the project. The end result is that the consumer would still pay 3.5% sales tax. Benefits of this approach are as follows:
 - The Town still retains is dedicated public safety and open space sales taxes.
 - Evergreen was unable to recover sufficient revenue from using sales tax increment through the urban renewal authority due to the time remaining on the TIF clock. This will allow Evergreen to recover their costs for the public improvements in a more conservative manner.
 - Since the Town of Frederick is a statutory Town, Evergreen will use a collection agent to coordinate receipt of their portion of sales tax. Once public improvements are paid off, the Town will go back to receiving the full 3.5% of municipal sales tax.

- This action requires that a separate ordinance be adopted (see Exhibit C to the Agreement).
- The Town is proposing to create a “water bank” to be used for this project in order to address the significant costs of water in the community. This water incentive will be implemented per lot based on the user and their water demand. Demand will be reviewed and verified by Staff and the cost of a water tap will be reduced by a percentage based on the size of the tap. Staff will administer this portion of the incentive and any unused “credits” will remain the property of the Town to use as it sees fit at the completion of the project. This approach ensures that a water incentive could not be “front-loaded” to one user while making subsequent users pay unusually high costs for water. The source of the water is coming from the water that the Town acquired as part of the 2021-2022 Strategic Plan and is already in our portfolio. The percentage of reduction was created based on a review of water costs outside of Frederick and the Carbon Valley as an effort to normalize the water costs with outside communities.
- There is space for a second potential anchor user (see Exhibit A-3 Phasing Exhibit). After a period of marketing this site for suitable retail users for 24 months, if Evergreen is unsuccessful in attracting a retail user, Evergreen may choose to submit an application to consider multi-family development at a density consistent with zoning code requirements. Additionally, before pursuing this alternative, the Town would have the option to acquire the remaining parcel if it so chooses.
- The Town acknowledges as part of this project there is a critical need for a ¾ access on Colorado Boulevard turning in to the front of the shopping center. This will be memorialized and reviewed on future submittals. Further, a ¾ access on Hwy 52 is proposed and is critical to the success of this development. Staff acknowledges this and will work with CDOT to facilitate this access point which was shown and approved in the adopted Access Control Plan.
- The Town will receive 3.0 mills as an administrative fee from the Metro District. A portion of this will be used to cover administrative costs for the urban renewal authority for this project.
- The Town will not unreasonably withhold approvals.
- Exhibit D in the Agreement identifies the eligible public improvements (which is identical to the exhibit shown in the Redevelopment and Reimbursement Agreement considered by the Urban Renewal Authority).
- Exhibit E in the Agreement also matches the same schedule contemplated in the Redevelopment and Reimbursement Agreement.

Legal Comments:

The Town Attorney’s Office has reviewed and approved both the attached agreement resolution and ordinance and will further review the agreement to ensure the final version is substantively similar to the version attached to this action item.

Alternatives/Options:

The Town could choose to not approve this agreement nor the sales tax ordinance. This alternative is not recommended as the costs of development on this site are significant. Staff believe this agreement is reflective of previous direction provided to Staff and have taken that in to consideration when drafting the agreement. Further, this agreement has been reviewed and mutually agreed with Evergreen. Lastly, independent review of the financial gap (see page 10 of Attachment C) states that “This analysis found that the development’s construction costs associated with a public private partnership with the Town were reasonable and not inflated.” The combination of the incentives contemplated through the Urban Renewal Authority and the Town are what bring the project to financial solvency.

The Board could choose to direct Staff to make changes to the proposed agreement. Staff have provided several updates throughout this process and structured the agreement consistent with feedback provided during those updates. If the Board desires to direct Staff to make changes, those changes would need to be reviewed by Evergreen prior to bringing back a final agreement for consideration. This would potentially impact some of the critical scheduling related to permit issuance and public announcement. For this reason, this alternative is not recommended.

Financial Considerations:

Currently, this site under consideration is not generating sales tax. With the proposed structure of the Town receiving 1.5% of sales tax, this would be an increase from 0% and would additionally support public safety and open space needs in the community. Further, once the eligible improvements have been reimbursed or the end of twenty-five years (whichever comes first), the Town will receive the full 3.5% of municipal sales tax.

Staff Recommendation:

Staff recommends approving this request, and attached agreement as finalized by the Town Attorney in substantially the same form as attached as reflected in the Resolution. Additionally, since the matters are intrinsically linked, the Staff recommends approval of the proposed ordinance which would require a separate action of the Board.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 23-R-08**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO APPROVING A PUBLIC FINANCE AGREEMENT
BETWEEN THE TOWN OF FREDERICK AND EVERGREEN DEVCO, INC.**

WHEREAS, The Town of Frederick has contemplated a large commercial center as an anchor to the Silverstone development since its initial approval; and

WHEREAS, the needs and desires of the community have continued to support adding retail amenities within the Town; and

WHEREAS, The Board of Trustees identified a retail attraction strategy in 2021 that targeted attracting traditional grocery options in Frederick; and

WHEREAS, the Board of Trustees identified a priority in their 2021-2022 Strategic Plan to acquire water resources to assist in facilitating target economic development projects in the Town; and

WHEREAS, Evergreen Devco, Inc. desires to develop a retail shopping center consistent with the goals and objectives identified in all previously adopted plans and studies; and

WHEREAS, The Town of Frederick believes the Public Finance Agreement is in the best interests of the Town; and

WHEREAS, Legal Counsel for the Town has been involved in the review and drafting of proposed agreement as attached.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Frederick, Colorado:

Section 1. The Town of Frederick approves the Public Finance Agreement, subject to finalization by the Town Attorney in substantially the same form as attached.

Section 2. Effective Date. This resolution shall become effective immediately upon adoption.

Section 3. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 4. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

Section 5. The Mayor is authorized to execute the agreement.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 16TH DAY OF FEBRUARY, 2023.

ATTEST:

TOWN OF FREDERICK

By _____

Meghan C. Martinez, Town Clerk

By _____

Tracie Crites, Mayor

PUBLIC FINANCE AGREEMENT

This PUBLIC FINANCE AGREEMENT (this “**Agreement**”) dated as of _____, 2023 (the “**Effective Date**”), is made by and among EVERGREEN DEVCO, INC., a California corporation (the “**Developer**”), the TOWN OF FREDERICK, a statutory town (the “**Town**”), and SILVERSTONE METROPOLITAN DISTRICT NO. 3 (“**District No. 3**”). The Developer, the Town, and District No. 3 are sometimes collectively called the “**Parties**,” and individually, a “**Party**.”

RECITALS

All capitalized terms used, but not defined, in these Recitals, have the meanings set forth above or in Section 2 of this Agreement.

A. The Developer is under contract to purchase and plans to develop the real property generally located at the northwest corner of Colorado Boulevard and State Highway 52 and consisting of approximately 41.145 acres, as more particularly described in Exhibit A-1 and depicted in Exhibit A-2 (the “**Property**”);

B. The Developer proposes to redevelop the Property as a highly attractive commercial center in two Phases (as defined below) (collectively, the “**Project**”);

C. The Property fronts on four public streets, implicating an extraordinary amount of landscaping and infrastructure requirements for a single project;

D. For development of the Project, existing oil and gas wells may be abandoned and capped at significant cost;

E. Due to the significant investment required for infrastructure, the up-front nature of the required investment, and the need for highly competitive end user rates and incentives, the Project would not be financially feasible through traditional private investment and financing mechanisms alone;

F. The Project will create significant economic benefits for the Town, will significantly increase sales, use, and property taxes and other revenues to the Town, will increase employment, will provide needed and desired goods and services to the community, and will enhance the value of the area surrounding the Property and therefore will benefit the public health, safety and welfare;

G. The Developer and the Town have agreed upon additional mechanisms to make the Project financially feasible, as described in this Agreement;

H. The Developer has agreed to design, construct and install all of the Eligible Improvements that together constitute the Project (defined below);

I. The Town has agreed to approve an amendment to the District No. 3 Service Plan (defined below) in order to assist in the design, finance, construction and operation of public infrastructure necessary to support the Project;

J. District No. 3 will issue one or more series of District Bonds to finance all or a portion of the costs of the Eligible Improvements; and

K. The Town has agreed to support the creation of the New District (defined below) in order to assist in the design, finance, construction and operation of public infrastructure necessary to support the Project.

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties contained in this Agreement, and other valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the terms and conditions in this Agreement.

AGREEMENT

1. **RECITALS.** The Recitals set forth above are hereby incorporated by this reference.
2. **DEFINITIONS AND QUALIFICATIONS.** In this Agreement, unless a different meaning clearly appears from the context, capitalized terms mean:

“**Add-on PIF**” means the one percent (1.00%) public improvement fee described in Section 3.6 that the Developer may, at the Developer’s option, impose on the Property.

“**Agreement**” means this Public Finance Agreement, as it may be amended or supplemented by written agreement of the Parties in writing, from time to time. References to sections or Exhibits are to this Agreement unless otherwise qualified. All Exhibits are incorporated into this Agreement.

“**CDOT**” means the Colorado Department of Transportation.

“**CDOT Approvals**” means the approvals from CDOT required for issuance of an access permit for a $\frac{3}{4}$ access to the Property from State Highway 52.

“**Code**” means the Frederick Municipal Code, as the same may be amended or supplemented.

“**Commence(s) Construction**” or “**Commencement of Construction**” means the visible commencement by the Developer or any District of actual physical construction and operations on the Property for the erection of the Eligible Improvements, including, without limitation, obtaining permits and licenses for and installation of a permanent required construction element, such as any site utilities, an access drive, any detention facilities, a caisson, a footing, a foundation or a wall.

“**Completion of Construction**” means construction acceptance of the Eligible Improvements in accordance with the Town Requirements, applicable laws, ordinances, and regulations of the Town and any other governmental entity or public utility with jurisdiction, subject to punch list items and any applicable conditions of maintenance and warranty, including, without limitation, the issuance of a temporary certificate of occupancy by the Town.

“**Costs of Issuance**” means, collectively, the reasonable and necessary costs incurred in connection with the issuance of District Bonds, including without limitation, underwriter’s

compensation, financial and management consultant fees, fees and expenses of bond counsel, counsel to the underwriter, counsel to any District and counsel to any party or entity from which an opinion of counsel is required in connection with the issuance of District Bonds (other than the Town), fees and expenses of any provider of credit enhancement, bond insurance, or guaranty, fees and expenses of the District Bond Trustee, bond registrar, paying agent, and transfer agent and rating agency fees. Costs of Issuance may be paid from the proceeds of the District Bonds.

“Credit PIF” means the public improvement fee imposed on retail sales within the Property in the amount of 2.0% of the sales price collected upon Taxable Transactions, which will be collected in accordance with the terms of the Credit PIF Covenant and the Credit PIF Collection Agreement, and will be accounted for and spent in accordance with the terms of this Agreement.

“Credit PIF Collection Agent” means an entity retained by the Developer for the purpose of collecting, accounting for, and disbursing to the Developer the Credit PIF Revenue in accordance with the Credit PIF Covenant.

“Credit PIF Collection Agreement” means an agreement related to the collection and remittance of the Credit PIF Revenue between the Developer and the Credit PIF Collection Agent.

“Credit PIF Covenant” means a declaration of covenants governing the Property agreed to by the owner of the Property and recorded with the Weld County Clerk and Recorder, imposing and implementing requirements for collection and payment of the Credit PIF on any Taxable Transactions conducted within the Property.

“Credit PIF Revenue” means the revenue derived from the imposition of the Credit PIF in accordance with the Credit PIF Covenant and this Agreement.

“Credit PIF Termination Date” means the date on which the Maximum Reimbursement Amount, plus any amounts pledged to Eligible Accrued Interest, have been collectively remitted to any combination of the Developer, the Credit PIF Collection Agent, or any successor or assignee to the Developer, any District, or the Credit PIF Collection Agent, unless the Credit PIF is extended pursuant to Section 5.2(b) hereof, in which case the Credit PIF Termination Date will be the date when the Town notifies the owners of the Property that they are no longer required to collect and remit the Credit PIF.

“Default” or “Event of Default” means any of the events described in Section 12 hereof; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and periods of enforced delay provided for in this Agreement.

“Developer” means, collectively, the Party stated in the Preamble to this Agreement, and any successors and assigns approved in accordance with this Agreement.

“Developer Advances” means, collectively, amounts advanced or incurred by Developer to pay any Eligible Costs. Developer Advances shall include, without limitation, (a) Eligible Costs paid directly or advanced by Developer, and (b) advances to any District for Eligible Improvements pursuant to a developer advance agreement by and between any District and the Developer. Interest may begin to accrue on Developer Advances on the date the Developer makes such Developer Advance.

“Developer’s Broker” means Crosbie Real Estate Group.

“District No. 3” means the Party stated in the Preamble to this Agreement.

“District No. 3 Service Plan” means the Consolidated Service Plan for Miners Village Metro Districts Nos. 1 and 2 and District No. 3, dated February 5, 2008, as may be amended from time to time pursuant to the requirements of the Special District Act, sec. 32-1-101, *et seq.*, C.R.S.

“Districts” means, collectively, District No. 3 and the New District. Either of District No. 3 and the New District may be referred to herein as a **“District”**.

“District Bond Trustee” means the trustee in connection with the issuance of any District Bonds.

“District Bond Documents” means any indenture, loan agreement or similar and additional documents pursuant to which the District Bonds are to be issued, and may include reasonable and necessary Costs of Issuance.

“District Bonds” means bonds or other evidence of indebtedness issued or incurred by any District to finance or refinance the Eligible Costs in accordance with this Agreement.

“District Bond Requirements” means the principal and interest due on the District Bonds, any amounts required in accordance with the applicable District Bond Documents to fund or replenish any reserve funds or surplus funds, any amounts required to repay any bond insurer or other guarantor of the debt service on the District Bonds or provider of liquidity or a credit facility with respect to the District Bonds, any payments due with respect to an interest rate exchange agreement or interest rate cap agreement, fees and expenses of the Credit PIF Collection Agent and District Bond Trustee, bond registrar, paying agent, rebate agent, authenticating agent or provider of any liquidity or credit facility with respect to the District Bonds, and any other amounts approved in writing by the Town.

“District Debt Service Mill Levy” means the annual mill levy imposed by any District on the Property for payment of debt and does not include any mill levy dedicated to the Town for Town operations and maintenance. The revenue produced by the District Debt Service Mill Levy shall be pledged to payment of the District Bonds so long as such District Bonds remain outstanding.

“District Operating Revenue” means revenue produced by any District’s imposition of a mill levy to pay the operations and maintenance expenses of such District, including any specific ownership tax revenue from the imposition of such mill levy, and certain revenue not pledged to pay District Bonds, as may be allowed under the District Bond Documents from time to time.

“District Pledged Revenue” means, collectively, the revenue produced by (a) the District Debt Service Mill Levy, (b) the District Specific Ownership Taxes, and (c) Pledged PIF Revenue.

“District Specific Ownership Taxes” means the specific ownership tax revenues received by any District in each year from the levy of the District Debt Service Mill Levy.

“**Effective Date**” means the date stated in the Preamble to this Agreement.

“**Eligible Accrued Interest**” means interest accrued on Developer Advances as follows:

(a) If the Developer constructs or acquires Eligible Improvements or finances Eligible Costs from money it does not borrow, including any Developer Advances made to any District to acquire or construct Eligible Improvements from non-borrowed money, interest shall accrue at a rate equal to Prime plus 3%, and shall be simple per annum interest, and shall not compound.

(b) If the Developer constructs or acquires Eligible Improvements or finances Eligible Costs from money that it borrows, including any Developer Advances made to any District to acquire or construct Eligible Improvements from borrowed money, interest shall accrue at a rate equal to the rate of interest that the Developer is paying to the Developer’s lender under the applicable loan documents, subject to the limitations contained in the applicable Service Plan.

“**Eligible Costs**” means the reasonable certified and approved costs of the Eligible Improvements in accordance with **Exhibit D**, but not to exceed the Maximum Reimbursement Amount.

“**Eligible Improvements**” means the improvements described in **Exhibit D**.

“**Exhibits**” The following Exhibits are a part of this Agreement:

Exhibit A-1: Legal Description of the Property

Exhibit A-2: Depiction of the Property

Exhibit A-3: Phasing Exhibit

Exhibit B: Form of Credit PIF Ordinance

Exhibit C: Excerpt from Town Code regarding Sales Tax

Exhibit D: Eligible Costs and Eligible Improvements

Exhibit E: Schedule of Performance

“**Force Majeure**” means any one or more of the following events or circumstances, whether alone or in combination: fire, earthquake, storm or other casualty or significant weather event; strikes, lockouts, or other labor interruptions; pandemics, including COVID-19; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of God or of any government (except that, as to any obligation of the Town, any acts of the Town itself not mandated by Colorado law shall not be considered Force Majeure); disruption to local, national or international transport services; shortages of materials; epidemics; utility delays; and any other events or circumstances, whether similar or dissimilar, that are beyond the respective Party’s reasonable control and have not been caused by the actions or inactions of the respective Party.

“Maximum Reimbursement Amount” means the amount of \$20,000,000 (Twenty Million and 00/100 Dollars), which is the maximum amount of Credit PIF Revenue to be remitted to any combination of the Developer, the Credit PIF Collection Agent, or any successor or assignee to the Developer, any District, or the Credit PIF Collection Agent, and including the amounts pledged to the payment of Costs of Issuance; provided, however, the amounts pledged to Eligible Accrued Interest are not included in and are in addition to the Maximum Reimbursement Amount.

“New District” means a new metropolitan district, proposed to be formed pursuant to Sections 32-1-101, *et seq.*, C.R.S., and its successors and assigns in order to assist in the design, finance, construction and operation of public infrastructure necessary to support the Project.

“New District Service Plan” means the service plan proposed to be approved for the New District, as the same may be amended from time to time pursuant to the requirements of Sections 32-1-101, *et seq.*, C.R.S.

“Party” or **“Parties”** has the meaning set forth in the Preamble to this Agreement.

“Permit Fees” means any Town fee applicable to the Project, including any fee imposed as a condition to the issuance of a Town permit for public or private improvements, but excluding any tax.

“Phase” means Phase 1 or Phase 2, as applicable.

“Phase 1” means the first phase of the Project, consisting of a grocery anchor building, multi-tenant and freestanding retail, and restaurant and commercial pad buildings fronting Highway 52 and Colorado Boulevard.

“Phase 1 Property” means the portion of the Property on which Phase 1 will be located, consisting of approximately 32.8 acres and as depicted as “Phase I” in **Exhibit A-3**.

“Phase 2” means the second phase of the Project, consisting of retail, commercial or multifamily residential uses as approved by the Town.

“Phase 2 Property” means the portion of the Property on which Phase 2 will be located, consisting of approximately 12.7 acres and as depicted as “Phase II” in **Exhibit A-3**.

“Pledged PIF Revenue” means (a) prior to the issuance of any District Bonds, all of the Credit PIF Revenue, and (b) at any time that District Bonds are outstanding, the amount of Credit PIF Revenue that is pledged to the payment of any District Bonds, as set forth in the District Bond Documents from time to time.

“Pledged Revenue” means the District Pledged Revenue and any other amounts remitted to the District Bond Trustee for the payment of District Bonds.

“Prime” means the prime rate as published in the Wall Street Journal on the first business day of each calendar month, which shall be adjusted on a current monthly basis as of the first business day of each calendar month.

“Project” has the meaning set forth in the Recitals to this Agreement.

“Property” has the meaning set forth in the Recitals to this Agreement.

“Put Option” has the meaning set forth in Section 6.2 of this Agreement

“Put Option Notice” has the meaning set forth in Section 6.2 of this Agreement.

“Put Option Purchase Price” has the meaning set forth in Section 6.2 of this Agreement.

“Sales Tax” means the municipal sales tax of the Town on sales of goods and services that are subject to municipal sales taxes at such rate and on such terms and conditions as prescribed in the Code; an excerpt from the Code on Sales Tax current as of the Effective Date is attached hereto as **Exhibit C**.

“Sales Tax Credit” means the credit against the Town’s Sales Tax in the amount of 2.0% on Taxable Transactions, as implemented pursuant to the Sales Tax Credit Ordinance.

“Sales Tax Credit Ordinance” means Ordinance [REDACTED], Series 2023 approving the Sales Tax Credit, the proposed form of which is attached hereto as **Exhibit B**.

“Service Plan” means either of the District No. 3 Service Plan or the New District Service Plan.

“Silverstone PDP” means the Silverstone Preliminary Development Plan (formerly the Miner’s Village Preliminary Development Plan) approved by the Town of Frederick per Resolution No. 08R005, as amended from time to time.

“Silverstone PDP Amendment” means an amendment to the Silverstone PDP that will increase the density on the Phase 2 Property from 18 dwelling units per acre to no fewer than 25 dwelling units per acre and ensure a maximum height of structures of no fewer than 3 stories.

“Phase 2 Marketing Deadline” means July 15, 2024.

“Taxable Transactions” means the sale or provision of goods or services within the Project that are subject to the Town’s Sales Tax, as amended from time to time.

“Term” has the meaning set forth in Section 9 of this Agreement.

“Town” has the meaning set forth in the Preamble to this Agreement.

“Town Requirements” means, collectively, (a) the Code, (b) the Frederick Land Use Code, (c) the Town building codes and design criteria, (d) Town regulations, and (e) the Silverstone PDP.

“Water Credits” means 104.79 units of Colorado Big Thompson water shares. Water Credits are to be offered in the following manner: 82.55% reduction for a ¾” tap, 76.31% reduction for a 1” tap, 59% reduction for a 1 ½” tap and a 12.53% reduction for a 2” tap. At the completion

of development, any unused Water Credits shall remain under the sole discretion and control of the Town.

3. **THE DEVELOPER.** Subject to Section 6, the Developer agrees to comply with the following provisions:

3.1 **Construction of Eligible Improvements.** The Developer will be responsible for (i) creating and processing the final development plan, site plan, subdivision plat, and building permits with the Town, for each of Phase 1 and Phase 2 as reasonably necessary for development of the Project, (ii) cooperating as reasonably necessary with the Town in making a joint application with the Town to CDOT to obtain the CDOT Approvals, (iii) financing and constructing all Eligible Improvements, (iv) compliance in all material respects with the Town Requirements, (v) payment of Permit Fees related to development of the Project and (vi) commencing and developing each Phase of the Project as required by this Agreement, unless financing, construction, payment of Permit Fees, or development of the Project are performed by any District. The Developer or District No. 3 agrees to Commence Construction or cause Commencement of Construction of the Eligible Improvements that Developer or District No. 3 agrees to undertake and to reasonably proceed with or require such construction until Completion of Construction of such Eligible Improvements.

3.2 **Compliance with Design and Construction Regulations; Payment of Fees and Costs.** The design and construction of all Eligible Improvements will comply in all material respects with all applicable codes and regulations of entities having jurisdiction, including the Town Requirements and requirements of the water, wastewater and fire protection providers serving the Property, except as otherwise approved by the Town. Also, the Developer will pay or cause to be paid all required fees and costs, including those imposed by the Town, in connection with the design, construction, applicable warranty requirements, and use of the Eligible Improvements.

3.3 **Credit PIF.** Prior to the issuance of the first certificate of occupancy for the Phase 1 Property, the Developer, as owner of the Phase 1 Property, agrees to execute and record the Credit PIF Covenant requiring each owner of any portion of the Phase 1 Property to impose the Credit PIF upon all Taxable Transactions occurring within the Phase 1 Property until the Credit PIF Termination Date. Prior to the issuance of the first certificate of occupancy for the Phase 2 Property, the Developer, as owner of the Phase 2 Property, agrees to execute and record the Credit PIF Covenant requiring each owner of any portion of the Phase 2 Property to impose the Credit PIF upon all Taxable Transactions occurring within the Phase 2 Property until the Credit PIF Termination Date.

3.4 **Credit PIF Collection Agreement.** The Developer shall engage a Credit PIF Collection Agent to collect, disburse to the Developer and account for the Credit PIF Revenue pursuant to the Credit PIF Collection Agreement. The Developer shall provide the Credit PIF Collection Agreement to the Town and the Town shall have the right to review and approve the Credit PIF Collection Agreement prior to its execution or amendment by the respective parties thereto and recordation, in order to ensure that the Credit PIF Revenue is being collected, remitted and applied as required pursuant to this

Agreement. The Town shall not unreasonably withhold, condition or delay such approval of the Credit PIF Collection Agreement or any amendment thereto, provided that the Credit PIF Collection Agreement is consistent with this Agreement and the Sales Tax Credit Ordinance. Approval shall be deemed to be given if the Town does not provide written comments to the Credit PIF Collection Agreement or a proposed amendment thereto within thirty (30) days of the Developer's submittal thereof to the Town.

3.5 Retail Marketing. The Developer shall or shall cause Developer's Broker to use good faith, commercially reasonable marketing efforts to secure quality retail and commercial tenants for the Property, including securing a grocery anchor tenant commitment for a building of not less than 100,000 square feet in Phase 1. Such marketing efforts shall include soliciting the Property at all local and national International Council of Shopping Centers conventions.

3.6 Add-on PIF. The Developer may, at the Developer's option, impose the Add-on PIF on transactions initiated, consummated, conducted, transacted or otherwise occurring from or within the Property; provided, however, that the Developer shall have no obligation to impose such Add-on PIF.

4. DISTRICT NO. 3. Subject to Section 6, District No. 3 agrees to comply with the following provisions:

4.1 Compliance with Service Plan and Applicable Law. At all times District No. 3 will comply with the requirements of the applicable Service Plan, as it may be amended from time to time. To the extent authorized by the applicable Service Plan, the Districts may design, construct, finance, own, acquire, maintain, and operate Eligible Improvements in accordance with all applicable laws, ordinances, standards, policies, and specifications of the State of Colorado, the Town and any other entity with jurisdiction.

4.2 District Pledged Revenue. The Districts may impose the District Debt Service Mill Levy, for so long as any District Bonds remain outstanding, and District No. 3 covenants to pledge and cause remittance of the District Debt Service Mill Levy to the District Bond Trustee for such outstanding District Bonds. The Town shall be entitled to an order of mandamus to compel the Districts to certify such levy, as well as any other remedies of law or in equity. District No. 3 further covenants that so long as any District Bonds remain outstanding, that District No. 3 will remit all District Specific Ownership Taxes from the District Debt Service Mill Levy to the District Bond Trustee for payment of outstanding District Bonds.

The District Pledged Revenue shall be pledged to the payment of the principal of, interest on, and any premium due in connection with the redemption of the District Bonds, and may also be pledged to the payment of any other District Bond Requirements.

4.3 District Bonds.

(a) District Bonds may be issued by the Districts to pay for the Eligible Costs or reimburse the Developer for such costs and to apply the proceeds of the District Bonds as authorized under this Agreement.

(b) District Bonds shall be issued in a manner consistent with the requirements of the applicable Service Plan.

4.4 District Operating Revenue. The District Operating Revenue will be used to pay the normal and reasonable operating and maintenance expenses of the Districts or for any other lawful purpose.

4.5 No Impairment. District No. 3 will not enter into any agreement or transaction that impairs the rights of the Parties, including, without limitation, the right to receive and apply Pledged Revenue to payment of the District Bonds.

5. **THE TOWN**. Subject to Section 6, the Town agrees to comply with the following provisions:

5.1 Cooperation.

(a) Entitlements. The Town agrees to cooperate with the Developer and the Districts in expeditiously reviewing, scheduling hearings for, and considering approvals of the final development plan, site plan, subdivision plat, building permits for each of Phase 1 and Phase 2, and all subcomponents therein.

(b) CDOT Approvals. The Town agrees to cooperate as reasonably necessary with the Developer in making a joint application with the Developer to CDOT to obtain the CDOT Approvals.

(c) Access. Town staff has reviewed and supports the approval and installation of (i) a right-in-right-out access to the Property on Colorado Boulevard and (ii) a full movement access to the Property at 13th Street and Colorado Boulevard.

(d) Service Plan Amendment. The Town agrees to approve an amendment to the District No. 3 Service Plan to assist in the design, finance, construction and operation of public infrastructure necessary to support the Project.

(e) New District. In the event that the Developer petitions the Town to create the New District, the Town shall support the creation of the New District, including approval of the New District Service Plan, which New District shall be permitted but not obligated to perform activities including, but not limited to, imposing a mill levy, issuing District Bonds, and pledging revenues to the District Bonds; provided, however, that nothing herein shall obligate the Developer to petition the Town for the creation of the New District.

5.2 Sales Tax Credit Ordinance.

(a) Consideration of Sales Tax Credit Ordinance. In order to implement the Sales Tax Credit, the Town shall adopt an ordinance granting the Sales Tax Credit against the collection of Sales Tax on Taxable Transactions, in an amount equal to 2.0% of the Town's Sales Tax on Taxable Transactions, a copy of which

is attached as **Exhibit B** hereto. Provided this Agreement is in effect and the Sales Tax Credit Ordinance has been adopted by the Town Board of Trustees, the Town will authorize, grant and implement the Sales Tax Credit pursuant to the Sales Tax Credit Ordinance in order for the Credit PIF to be collected in accordance with the Credit PIF Covenant and this Agreement. The Sales Tax Credit Ordinance shall remain in effect until the Credit PIF Termination Date, subject to Section 5.2(b) below. In the event that the Town Board of Trustees does not adopt the Sales Tax Credit Ordinance on or before December 31, 2023, this Agreement shall be considered void and terminated, and the Town shall have no liability for any damages or remedies arising from failure to adopt the Sales Tax Credit Ordinance or for termination of this Agreement.

(b) Post Credit PIF Period. Notwithstanding any language in any agreement to the contrary, if following the Credit PIF Termination Date, the Town determines that termination of the Sales Tax Credit may be precluded by or require a refund of the Sales Tax under Article X, Section 20 of the Colorado Constitution, the Town may submit a written request to the Developer and then-current owners of the Property to continue to impose the Credit PIF. The Credit PIF Covenant shall provide that upon receipt of such request, the Credit PIF shall remain in full force and effect and the full amount derived from imposition of the Credit PIF shall be paid to the Town as a substitute for the Sales Tax revenue it is unable to collect.

5.3 Town Water Bank. For purposes of reducing the Developer's water tap fees for the end users in the Project and thereby supporting the financial feasibility of the Project, the Town agrees to provide the Property with the Water Credits, which shall be applied to the water dedication requirements of the Project as the same is developed. The Water Credits shall be allocated among the lots in each Phase as determined by the Developer, and such allocation shall be a reduction to the water dedication requirements on a percentage basis, dependent upon the tap size required per lot. Any Water Credits that remain upon Completion of Construction shall remain with the Town to be used at the Town's discretion.

5.4 Compliance with Law. Nothing set forth in this Agreement is intended or shall be construed to constitute or to require (a) an unlawful delegation of authority by the Town; (b) an unlawful restraint on the legislative discretion of future Town Boards of Trustees; or (c) the undertaking of any multiple fiscal year obligation by the Town except as permitted by applicable law. Nothing in this Agreement is intended to nor shall be construed to create any multiple-fiscal year direct or indirect debt or financial obligation on the part of the Town within the meaning of the Constitution or laws of the State of Colorado, and any such financial obligation of the Town created by this Agreement is expressly subject to annual appropriation by the Town. Nothing contained in this Agreement shall prohibit the Town, after complying with all requirements of law, from increasing or decreasing the Sales Tax rate.

6. **PHASE 2 MARKETING AND PUT OPTION.**

6.1 Silverstone PDP Amendment. If, in spite of using or causing Developer's Broker to use good faith, commercially reasonable marketing efforts to secure quality retail and commercial tenants for Phase 2 pursuant to Section 3.5, the Developer determines in its commercially reasonable discretion that it has not secured sufficient economic interest from commercial tenants to support a financially feasible shopping center in Phase 2 by the Phase 2 Marketing Deadline, the Developer shall submit an application for the Silverstone PDP Amendment to the Town for approval, and the Town shall cooperate with the Developer in expeditiously reviewing, scheduling hearings for, and considering approval of the same.

6.2 Put Option. If the Developer submits an application for the Silverstone PDP Amendment to the Town for approval pursuant to Section 6.1 but the Town denies the application, the Developer shall have the option in its sole and absolute discretion to sell the Phase 2 Property to the Town for the price and subject to the terms set forth herein (the "**Put Option**") by delivery of written notice (the "**Put Option Notice**") to the Town. If the Developer delivers the Put Option Notice, the Town and the Developer shall enter into and deliver a purchase agreement providing for the purchase of the Phase 2 Property by the Town for the Put Option Purchase Price, in an "**AS IS**", "**WHERE IS**" and "**WITH ALL FAULTS**" condition, without any warranty, representation or covenant of any kind by the Developer other than customary representations and warranties not related to the condition of the Phase 2 Property or the status of this Agreement. All fees and costs in connection with Phase 2 and the Eligible Improvements therein shall be prorated between the Town and the Developer as of the date of conveyance of the Phase 2 Property. The "**Put Option Purchase Price**" means the greater of (a) the fair market value of the Phase 2 Property at the time of delivery of the Put Option Notice as determined by a third party appraiser selected by the Developer and Town mutually or (b) the purchase price paid by Developer to acquire the Phase 2 Property.

6.3 Effect of Exercise of Put Option. Notwithstanding anything to the contrary in this Agreement, if the Developer exercises the Put Option and conveys the Phase 2 Property pursuant to this Section 6, the Developer, District No. 3, and the Town shall be released of all their obligations set forth in this Agreement with respect to Phase 2 or the Phase 2 Property as of the date of conveyance of the Phase 2 Property.

7. **BOOKS AND ACCOUNTS; FINANCIAL STATEMENTS.** District No. 3 shall keep proper and current itemized records, books, and accounts in which complete and accurate entries will be made of the receipt and use of all amounts of revenue received from any and all sources and such other calculations required by this Agreement, the District Bond Documents, and any applicable law or regulation. District No. 3 shall prepare, after the close of each fiscal year, a complete financial statement prepared in accordance with generally accepted accounting principles accepted in the United States of America for such year in reasonable detail covering the above information, and if required by statute, certified by a public accountant, and will furnish a copy of such statement to the other Parties by September 30th of each year, or upon such earlier date as may be required by the District Bond Documents.

All books, records and reports (except those allowed or required by applicable law to be kept confidential) in the possession of the Town and District No. 3, including, without limitation, those relating to the Pledged PIF Revenue, Eligible Improvements, Eligible Costs, District Pledged Revenue, District Operating Revenue, and District Bonds will at all reasonable times be open to inspection by such accountants or other agents as the respective Parties may from time to time designate.

8. **REPRESENTATIONS AND WARRANTIES.**

8.1 Representations and Warranties by District No. 3. District No. 3 represents and warrants as follows:

(a) District No. 3 is a quasi-municipal corporation and political subdivision of the State of Colorado, organized and existing in accordance with Title 32, Article 1, C.R.S., and has the legal capacity and the authority to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto.

(b) The execution and delivery of this Agreement and such documents and the performance and observance of their terms, conditions and obligations have been duly and validly authorized by all necessary action on its part, and such documents and such performance and observance are valid and binding upon District No. 3.

(c) The execution and delivery of this Agreement and the documents required and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene District No. 3's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which District No. 3 is a party or by which they may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of District No. 3.

(d) District No. 3 does not have any actual knowledge of any litigation, proceeding, initiative, referendum, or investigation or threat of any of the same contesting the powers of the Town, District No. 3 or any of their officials with respect to this Agreement that has not been disclosed in writing to the Parties.

(e) The District Pledged Revenue is not subject to any other or prior pledge or encumbrance, and District No. 3 will not pledge or encumber it except as specified herein or as may be provided in the District Bond Documents or the documents related to the issuance of the District Bonds.

(f) This Agreement constitutes a valid and binding obligation of District No. 3, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

8.2 Representations and Warranties by the Developer. The Developer represents and warrants as follows:

(a) The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado and in good standing and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

(b) The execution and delivery of this Agreement have been duly and validly authorized by all necessary action on the Developer's part to make this Agreement and are valid and binding upon the Developer.

(c) The execution and delivery of this Agreement will not (i) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Developer is a party or by which it may be bound or affected, or (ii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Developer.

(d) The Developer knows of no litigation, proceeding, initiative, referendum, or investigation or threat or any of the same contesting the powers of the Developer or any of its principals or officials with respect to this Agreement that has not been disclosed in writing to the other Parties.

8.3 Representations and Warranties by the Town. The Town represents and warrants as follows:

(a) The Town is a statutory town of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

(b) The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

(c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene the Town's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town.

(d) This Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms, except to the extent limited by Colorado

law, bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

9. **TERM**. The term of this Agreement (“**Term**”) is the period commencing on the Effective Date and terminating on the date of payment in full of the District Bonds or the Credit PIF Termination Date, whichever occurs later, unless terminated pursuant to Section 5.2. Notwithstanding anything to the contrary herein, in the event that the Property is disconnected from the Town, this Agreement and the Sales Tax Credit Ordinance shall automatically terminate, and the Town shall not be liable for any damages or remedies due to the termination thereof.

10. **CONFLICTS OF INTEREST**. None of the following will have any personal interest, direct or indirect, in this Agreement: a member of the governing body of the Town or an employee of the Town who exercises responsibility concerning the Town Requirements, or an individual or firm retained by the Town who has performed consulting services to the Town or this Agreement. None of the above persons or entities will participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

11. **NOTICES**. Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given for all purposes if delivered in person, by prepaid overnight express mail or overnight courier service, by certified mail or registered mail, postage prepaid return receipt requested, addressed to the Party to whom such notice is to be given at the address set forth on the signature pages below or at such other or additional addresses as may be furnished in writing to the other Parties. Additionally, the Parties agree to provide concurrent notice via electronic mail.

12. **EVENTS OF DEFAULT**. The following event shall constitute an Event of Default under this Agreement: any Party fails in the performance of any covenant in this Agreement, and such failure continues for thirty (30) days after written notice specifying such Default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party. If such Default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party or Parties within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the Default following the end of such thirty (30) day period to cure such Default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith. As of the Effective Date, no Party has actual knowledge of an Event of Default under this Agreement.

13. **REMEDIES**. Upon the occurrence and continuation of an Event of Default, any non-defaulting Party's remedies will be limited to the right to enforce the defaulting Party's obligations by an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus, or by an action to collect and enforce payment of sums owing hereunder, and no other remedy (unless otherwise expressly authorized by this Agreement), and no Party will be entitled to or claim damages for an Event of Default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages. In the event of any litigation or other proceeding to enforce any of the terms, covenants

or conditions of this Agreement, the prevailing party in such litigation or other proceeding will receive, as part of its judgment or award, its reasonable attorneys' fees and costs.

14. **NONLIABILITY OF OFFICIALS, AGENTS, MEMBERS, AND EMPLOYEES.**

Except for willful or wanton actions, no trustee, board member, commissioner, official, employee, consultant, manager, member, shareholder, attorney or agent of any Party, nor any lender to any Party or to the Project, will be personally liable under this Agreement or in the event of any default or for any amount that may become due to any Party.

15. **ASSIGNMENT.** This Agreement will not be assigned in whole or in part by any Party without the prior written consent of the other Parties; provided, however, the following assignments and transfers will not require any such consent: (A) the Developer may assign all or a portion of this Agreement to the Districts and (B) subject to written notice to the other Parties from the Developer containing the name and address of the lender or other party, the Developer may pledge, collaterally assign or otherwise encumber all or any part of its rights under this Agreement, including its right to receive any payment or reimbursement, to any lender or other party that provides acquisition, construction, working capital, tenant improvement or other financing to the Developer in connection with development of the Property, acquisition of the Property, and/or construction of the Eligible Improvements. The Town and District No. 3 recognize that the Developer may form, together with its investors, separate, special purpose entities to develop, own and/or operate all or a portion of the Property or of the Eligible Improvements to be constructed thereon and that one or more assignments of all or any part of its rights under this Agreement may be required in connection with such activities and such transfer(s) will not require any consent by the other Parties, as long as written notice of the transfer is provided to the other Parties containing the name and address of the successor/assignee. Payment of the Credit PIF to any such successor or assignee of the Developer shall count towards payment of the Maximum Reimbursement Amount to the Developer. Nor shall any transfer of any or all of the real property constituting the Property require the consent of the Town or any District.

16. **COOPERATION REGARDING DEFENSE.** In the event of any litigation or other legal challenge involving this Agreement, or any material part or provision of this Agreement or the ability of any Party to enter into this Agreement, the Parties will cooperate and jointly defend (if all Parties are named as defendants) against such action or challenge, to the extent permitted by law.

17. **SECTION CAPTIONS.** The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

18. **ADDITIONAL DOCUMENTS OR ACTION.** The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested or required by lenders, that is necessary to carry out this Agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the

Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

19. **AMENDMENT**. This Agreement may be amended or supplemented only by an instrument in writing signed by the Parties.

20. **WAIVER OF BREACH**. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

21. **GOVERNING LAW; VENUE**. The laws of the State of Colorado govern this Agreement. The District Court of Weld County will be the exclusive venue for any litigation.

22. **BINDING EFFECT, ENTIRE AGREEMENT**. This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph permits the assignment of this Agreement except as set forth in Section 15. This Agreement represents the entire Agreement among the Parties regarding the Credit PIF and supersedes any prior written or oral agreements or understandings with regard to the Credit PIF not specifically set forth in this Agreement.

23. **EXECUTION IN COUNTERPARTS**. This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which will constitute but one and the same instrument.

24. **LIMITED THIRD-PARTY BENEFICIARIES**. This Agreement is intended to describe the rights and responsibilities only as to the Parties to this Agreement. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party to this Agreement. Notwithstanding anything in this Agreement to the contrary, in the event that there are found to be any third party beneficiaries, (a) no third party beneficiary's consent or approval shall be required for any amendment, modification or termination of this Agreement entered into by the Parties or for any waivers or consents granted hereunder by any Party, and (b) the rights of said third party beneficiaries may be amended, modified or terminated by the mutual agreement of the Parties, and waivers and consents granted, without the consent or approval of said third party beneficiaries.

25. **NO PRESUMPTION**. The Parties and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement will be construed without regard to any presumption or other rule of construction against the Party causing this Agreement to be drafted.

26. **SEVERABILITY**. If any provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be void or unenforceable, the same will in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of this Agreement as a whole.

27. **DAYS**. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal

holiday pursuant to Section 24-11-101(1), C.R.S., such day will be extended until the next day on which such banks and state offices are open for the transaction of business.

28. **RECORDING**. This Agreement will not be recorded in the real property records of Weld County, Colorado.

29. **GOOD FAITH OF PARTIES**. In the performance of this Agreement, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

30. **PARTIES NOT PARTNERS**. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

31. **NO WAIVER OF IMMUNITY**. Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law.

32. **DELAY; FORCE MAJEURE**. Time is of the essence, provided that any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of Force Majeure.

(Signature pages to follow)

WHEREFORE, the Parties have executed this Agreement on the day and year first above written.

ATTEST:

TOWN OF FREDERICK, COLORADO

Meghan C. Martinez, Town Clerk

(SEAL)

Tracie Crites, Mayor

Notice Address:
Town of Frederick
401 Locust Street
P.O. Box 435
Frederick, Colorado 80530

With a copy to:

TOWN SIGNATURE PAGE TO PUBLIC FINANCE AGREEMENT

DEVELOPER:

EVERGREEN DEVCO, INC.,
a California corporation

By: _____
Name:
Its:

Notice Address:

Evergreen Devco, Inc.
1873 S. Bellaire Street, Ste. 1200
Denver, CO 80222
Attn: Tyler Carlson
Email: tcarlson@evgre.com

with copy to:

2390 E. Camelback Road, Ste. 410
Phoenix, AZ 85016
Attn: Laura Ortiz
Email: lortiz@evgre.com

with copy to:

Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Attention: Carolynne C. White, Esq. and Angela
Hygh, Esq.
Email: cwhite@bhfs.com; ahygh@bhfs.com

DEVELOPER SIGNATURE PAGE TO PUBLIC FINANCE AGREEMENT

DISTRICT NO. 3:

SILVERSTONE METROPOLITAN
DISTRICT NO. 3

By: _____
Name:
Its:

Notice Address:

Silverstone Metropolitan District No. 3
c/o White Bear Ankele Tanaka & Waldron
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attn: Sean Allen

with copy to:

Evergreen Devco, Inc.
1873 S. Bellaire Street, Ste. 1200
Denver, CO 80222
Attn: Tyler Carlson
Email: tcarlson@evgre.com

EXHIBIT A-1

Legal Description of the Property

Tract A, Silverstone Filing No. 5 – 0.225 acre

Tract B, Silverstone Filing No. 5 – 3.081 acre

Portion of Tract A, Silverstone Filing No. 1 – 37.848 acres

Lot 1, Block 8, Silverstone Filing No. 1 – 4.579 acres

EXHIBIT A-2

Depiction of the Property



EXHIBIT A-3

Phasing Exhibit

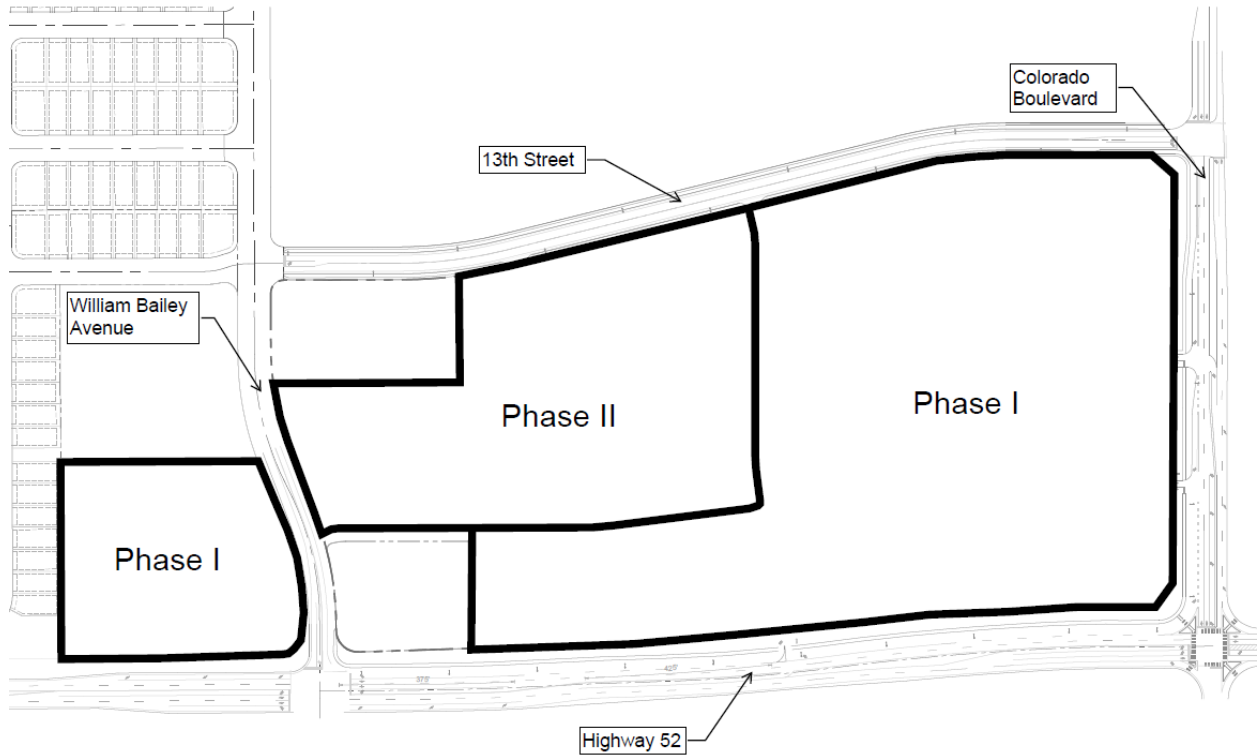


EXHIBIT B
Sales Tax Credit Ordinance

[see attached]

EXHIBIT C

Excerpt from Town Code regarding Sales Tax

Article VI. Sales and Use Tax

Sec. 4-91.

Purpose.

The purpose of this Article is:

- (1) To impose a sales tax upon the sale at retail of tangible personal property and the furnishing of certain services in the Town, pursuant to the authority granted to incorporated towns under state law. This Article shall be so construed and interpreted as to effectuate the general purpose of making it uniform with the sales tax of the State, levied by state law.
- (2) To impose a tax for the use of construction or building materials, and on motor or other vehicles purchased at retail, on which registration is required, pursuant to authority granted by state law. (Ord. 272 §1, 1977)

Sec. 4-92.

Definitions.

Except as otherwise expressly provided, the definitions or words used in this Article shall be the same as the definitions found in Sections [39-26-102](#) and [39-26-201](#), C.R.S., and said definitions are incorporated herein by this reference; except that the reference to the State, where such references are to the geographic extent of the taxing authority, the same shall mean the Town. (Ord. 272 §2, 1977)

Sec. 4-93.

Sales tax.

- (a) There is hereby levied and imposed, and there shall be collected and paid, a two and one-half percent (2 1/2%) sales tax upon the gross receipts of the sale at retail of tangible personal property and the furnishing of

certain services, as provided in "The Emergency Retail Sales Tax Act of 1935," set forth in Article 26, Title 39, C.R.S., which provisions are incorporated herein by this reference. Of the sales tax, one-fifth (1/5) of the total taxes collected (one-half-percent sales tax) shall be designated as the "open space sales tax" and placed in a special Open Space, Acquisition, Development and Maintenance Fund and the remaining four-fifths (4/5) of the total taxes collected (two-percent sales tax) shall be spent on debt service, municipal operations capital projects and any other lawful municipal purpose.

- (b) The amount subject to tax shall not include the amount of any sales or use tax imposed by state law.
- (c) For the purpose of this Article, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town.
- (d) The gross receipts from sales shall include delivery charges, when such charges are subject to the state sales and use tax imposed by state law, regardless of the place to which delivery is made.
- (e) In the event a retailer has no permanent place of business in the Town or has more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of the sales tax imposed by this Article shall be determined by the provisions of state law and by rules and regulations promulgated by the State Department of Revenue. (Ord. 272 §3, 1977; Ord. 538 §1, 1999)

Sec. 4-94.

Exemptions, sales tax.

- (a) There shall be exempt from taxation under the provisions of this Article all of the tangible personal property and services which are exempt under the provisions of "The Emergency Retail Sales Tax Act of 1935," as set forth in Article 26, Title [39](#), C.R.S., which exemptions are incorporated herein by this reference, including exemptions allowed therein for purchases of food stuffs, machinery or machine tools, also electricity, coal, gas, fuel oil and coke used for residential purposes.
- (b) All sales of tangible personal property on which a specific ownership tax has been paid or is payable shall be exempt from sales tax when such sales meet both of the following conditions:
 - (1) The purchaser is a nonresident of, or has its principal place of business outside of, the Town; and
 - (2) Such tangible personal property is registered or required to be registered outside the limits of the Town under the laws of the State.
- (c) No sales tax shall apply to the sale of construction and building materials, as the term is used in Section [29-2-109](#), C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation evidencing that a local use tax has been paid or is required to be paid.

(d) No sales tax shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subject to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city or town equal to or in excess of that sought to be imposed by the Town, and a credit shall be granted against the sales tax imposed by the Town with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user. The amount of the credit shall not exceed the sales tax imposed herein. (Ord. 272 §4, 1977)

Sec. 4-95.

Collection, administration and enforcement.

(a) The collection, administration and enforcement of the sales tax imposed by this Article shall be performed by the Director of Revenue of the State in the same manner as the collection, administration and enforcement of the state sales tax. Accordingly, the provisions of state law and all rules and regulations adopted by the Director of Revenue pertaining to such collection, administration and enforcement are incorporated herein by this reference.

(b) At the time of making the monthly return of the tax as required by this Article, every retailer shall be entitled to subtract from the tax so remitted a sum equal to three and one-third percent (31/3%) of said tax as its fee, said fee to be known as the "Vendor's Fee."

(c) If the retailer shall be delinquent in remitting said tax, the retailer shall forfeit the three and one-third percent (31/3%) unless good cause is shown for such delinquency. (Ord. 272 §5, 1977)

Sec. 4-96.

Licenses.

(a) It shall be unlawful for any person to engage in the business of selling tangible personal property at retail, or to furnish certain services as herein specified, without first having obtained a license therefor, which license shall be granted and issued by the Town Clerk pursuant to Chapter [6](#), Article [I](#) of this Code as may be amended from time to time.

(b) In case business is transacted at two (2) or more separate places by one (1) person, a separate license for each place of business shall be required.

(c) Each license shall be numbered and shall show the name, residence, place and character of business of the licensee, and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable. (Ord. 272 §6, 1977; Ord. 1143 §1, 2013)

Sec. 4-97.

Use tax.

(a) Any person who shall build, construct, reconstruct, alter, expand, modify or improve any building or other structure or improvement to any real property located within the Town, and who shall purchase the lumber, fixtures or any other building materials and supplies used therefor from any source outside the corporate limits of the Town, or any resident of the Town who shall purchase any motor vehicle or any other vehicle for which registration is required, under the laws of the State, either new or used, outside the corporate limits of the Town, shall be liable for the payment of a tax of two and one-half percent (2 1/2%) of the gross purchase price thereof. Of the use tax, one-fifth (1/5) of the total taxes collected (one-half-percent use tax) shall be designated as the "open space use tax" and placed in a special Open Space, Acquisition, Development and Maintenance Fund and the remaining four-fifths (4/5) of the total taxes collected (two-percent use tax) shall be spent on debt service, municipal operations capital projects and any other lawful municipal purpose.

(b) Imposition of the taxes imposed herein shall be in accordance with schedules set forth in the rules and regulations of the Department of Revenue and in accordance with regulations enacted by this Article. (Ord. 272 §7, 1977; Ord. 538 §2, 1999)

Sec. 4-98.

Exemptions, use tax.

(a) For the purpose of this Article, the use tax imposed under this Article shall not apply to the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the Town, and he or she purchased the vehicle outside the Town, for use outside the Town and actually so used it for a substantial and primary purpose for which it was acquired, and he or she registered, titled and licensed said motor vehicle outside the Town.

(b) The use tax shall be imposed only for the privilege of consuming in the Town any construction and building materials purchased at retail, or for the privilege of storing, using or consuming in the Town any motor and other vehicles, purchased at retail and on which registration is required, or both, but shall not apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subject to a legally imposed sales or use tax by the Town, or by another town, city or county equal to or in excess of the tax imposed herein. A credit shall be granted against the use tax imposed by this Article with respect to a person's use or consumption in the Town of tangible personal property purchased by him or her in another town, city or city and county, and a credit equal to the tax paid by him or her by reason of the imposition of a sales or use tax of a previous town, city or city and county shall be given. The amount of credit shall not exceed the tax imposed herein.

(c) The use tax shall not apply to the storage of construction and building materials.

- (d) No use tax shall apply to the storage, use or consumption of tangible personal property by the United States government or the State, its institutions or its political subdivisions in their governmental capacities only, or by religious or charitable corporations in the conduct of their regular religious or charitable functions.
- (e) Use tax shall not apply to the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished, and the container, label or furnished shipping case thereof.
- (f) No use tax shall apply to the storage, use or consumption of tangible personal property and household effects acquired outside the Town and brought into Town by a nonresident acquiring residency.
- (g) No use tax shall apply to the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required, if a written contract for the purchase thereof was entered into prior to the effective date of this Article.
- (h) Use tax shall not apply to the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to the effective date of this Article. (Ord. 272 §8, 1977)

Sec. 4-99.

Collection, administration and enforcement.

The Board of Trustees is hereby authorized to contract and enter into agreements with the Executive Director of the Department of Revenue for collection of use taxes on motor vehicles and mobile homes, and with the County Clerk and Recorder for the collection of the taxes imposed herein on construction and building materials, or may have the latter collected in connection with the Town's building permit procedures. (Ord. 272 §9, 1977)

Sec. 4-100.

Aggregate and recycled concrete exemptions.

- (a) The sale and use taxes imposed under this Article shall not apply to the sale or production or purchase of any materials, equipment, services or parts used in the production of aggregate, as defined in Subsection [\(c\)](#) below, or recycled concrete or recycled asphalt materials, during the life of the mine or pit. The life of the mine or pit shall be deemed to have expired upon a landowner or operator applying for release of mining bonds or other security held by regulatory authorities.

(b) The exemption in this Section shall apply only to uses within the scope of the sale or production of aggregate or recycled concrete or recycled asphalt materials and to no other uses occurring on a property.

(c) For purposes of this Article, the exemption in this Section shall also include exemption from taxes subsequently levied by the Town on the sale or production or purchase of any materials, equipment, services or parts used in the production of aggregate or recycled concrete or recycled asphalt materials. Such exemption shall not extend to real or personal property, municipal mill levy, or any county, state or federal tax.

(d) The exemption in this Section applies to all mine or pit properties located within the boundaries of the Town and to any mine or pit property subsequently annexed into the boundaries of the Town.

(e) For purposes of this exemption, *aggregate* shall mean and include, without limitation, any combination of stone, rock, boulders, cobbles, gravel, sand, silt, clay, shale, bedrock, solid minerals, overburden, topsoil, earth or earth-rock mixtures in their natural or processed state. (Ord. 1058 §2, 2011)

Sec. 4-101—4-140.

Reserved.

EXHIBIT D

Eligible Costs and Eligible Improvements

Eligible Public Improvements	Cost
Design and construction of 13th street	\$ 2,780,681.82
13th St. and Colorado Blvd. intersection design and construction	\$ 1,370,218.20
Colorado Blvd. west half widening	\$ 2,676,301.55
Hwy 52 north half widening	\$ 2,228,623.61
Regional detention pond	\$ 1,837,155.53
Trunk utilities	\$ 1,933,631.80
Landscaping	\$ 1,175,000.00
Total Eligible Public Improvements	\$ 14,001,612.51

*Note: All costs are subject to further design and bidding.

EXHIBIT E

Schedule of Performance

<u>Milestone</u>	<u>Date</u>
Developer to secure a letter of intent for anchor user	COMPLETE
Town approves agreement regarding provision of raw water and water taps to serve the Property	MARCH 31, 2023
Developer delivers design development documents to the Town	JUNE 30, 2023
Developer delivers evidence of anchor user purchase contract to the Frederick Urban Renewal Authority	DECEMBER 31, 2023
Developer obtains approval of design development documents from Town	DECEMBER 31, 2023
Developer obtains approval of the District Bond Documents from the Frederick Urban Renewal Authority	DECEMBER 31, 2024
Commencement of Construction	DECEMBER 31, 2024
Completion of Construction	DECEMBER 31, 2025

**TOWN OF FREDERICK, COLORADO
ORDINANCE NO. 1384**

**AN ORDINANCE OF THE TOWN OF FREDERICK COLORADO, PROVIDING
FOR A SALES TAX CREDIT ON THE SILVERSTONE PROPERTY**

WHEREAS, the Board of Trustees of the Town of Frederick, Colorado (the “Town”) has authorized the Town to enter into a specific Public Finance Agreement between and among the Town, Evergreen Devco, Inc., a California corporation, and Silverstone Metropolitan District No. 3, approved by the Board of Trustees of the Town on _____, 2023 (the “Public Finance Agreement”); and

WHEREAS, the Town has levied a sales and use tax pursuant to Chapter 4, Article VI of the Frederick Municipal Code, as amended from time to time (“Sales Tax”); and

WHEREAS, pursuant to the terms of the Public Finance Agreement, the Board of Trustees has agreed to grant a credit against the collection and payment of Sales Tax levied within the real property generally located at the northwest corner of Colorado Boulevard and State Highway 52 and consisting of approximately 41.145 acres, as more particularly described in **Exhibit A** (the “Silverstone Property”) in the amount of 2.0%.

WHEREAS, the Board of Trustees finds that the Sales Tax credit created by this ordinance is in the best interests of the citizens of the Town and that it will continue to aid in the finance and development of necessary public improvements that will benefit the residents of the Town and patrons of the Silverstone Property, while increasing the amount of Sales Tax revenues available for use by the Town in protecting and promoting the public health, safety and general welfare.

**BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF
FREDERICK, COLORADO, AS FOLLOWS:**

Section 1. Sales Tax Credit:

Unless the Public Finance Agreement is not executed or is terminated for any reason, effective upon the issuance of a Certificate of Occupancy for a use that generates Sales Tax revenue, there shall be granted to each person or entity obligated to pay, collect or remit the Sales Tax levied within the Silverstone Property a tax credit against the collection of Sales Tax as hereinafter set forth. Such Sales Tax credit shall be granted in the form of a reduction in the applicable Sales Tax rate in an amount equal to 2.0% so that the effective Sales Tax rate levied by the Town within the Silverstone Property under the existing Sales Tax shall be 1.5% as contemplated in the Public Finance Agreement.

The Sales Tax credit created by this Ordinance shall automatically expire upon the earlier of: termination of the Public Finance Agreement; or the date on which the Maximum Reimbursement Amount (\$20,000,000), as defined in the Public Finance Agreement, has been generated.

When required by the Frederick Municipal Code and/or Colorado law and regulations, the Town shall provide notice to all parties (e.g., Colorado Department of Revenue, retailers within the Silverstone Property) as is necessary to effectuate and terminate this Sales Tax credit.

Nothing in this Ordinance shall prohibit the Town, after meeting all Colorado Constitutional and Statutory requirements, from increasing or decreasing the Sales Tax so long as the Sales Tax credit is not affected thereby.

Section 2. Section 20, Article X, Colorado Constitution (TABOR). The Board of Trustees hereby determines that the creation or termination of this Sales Tax credit does not constitute a new tax, tax rate increase, or tax policy change directly causing a net tax revenue gain to the Town, or creates a multiple-fiscal year direct or indirect debt or other financial obligation of the Town that would otherwise require approval by the electors pursuant to Section 20, Article X of the Colorado Constitution, also known as the Taxpayer's Bill of Rights (TABOR).

Section 3. Effective Date. This ordinance shall be published and become effective as provided by law.

Section 4. Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Board of Trustees hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases are declared invalid.

Section 5. Repealer. All ordinances or resolutions and motions of the Board of Trustees or parts thereof, in conflict with this ordinance are to the extent of such conflict hereby superseded and repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance, resolution or motion, nor revive any ordinance, resolution or motion thereby.

**INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED
THIS ____ DAY OF _____ 2023.**

ATTEST:

TOWN OF FREDERICK

By _____
Meghan Martinez, Town Clerk

By _____
Tracie Crites, Mayor

Exhibit A

Legal Description of the Property

Tract A, Silverstone Filing No. 5 – 0.225 acre

Tract B, Silverstone Filing No. 5 – 3.081 acre

Portion of Tract A, Silverstone Filing No. 1 – 37.848 acres

Lot 1, Block 8, Silverstone Filing No. 1 – 4.579 acres



Gap Financing Analysis

Miner's Village Urban Renewal Plan

Frederick Urban Renewal Authority

167963 | July 6, 2022



Building a Better World
for All of Us®

Engineers | Architects | Planners | Scientists



Building a Better World
for All of Us®

July 6, 2022

Gap Financing Analysis
Frederick Urban Renewal Authority

Dear Frederick Urban Renewal Authority Board of Commissioners,

The following report represents a detailed review of the financial plan and estimated tax increment projections for the Silverstone Development, which will be located within Miner's Village Urban Renewal Plan area. Project information, budgets, and proformas were provided by the site owner/developer, Evergreen and the investment bank, Piper Sandler.

This development review is intended to provide a third-party, objective evaluation of the proposed development, its probable assessed valuation, its TIF generation, and its estimated financial gap. The review is designed to inform FURA's public investment and decision-making process. This report summarizes SEH's review and findings.

Sincerely,

Andrew Arnold, AICP
Economic Development Planner
Short Elliott Hendrickson, Inc (SEH®)

CC: Ryan Johnson

Executive Summary

The Miner's Park Urban Renewal Plan Gap Financing Analysis:

The Miner's Village Urban Renewal Plan was formed in 2015. This Plan area encompasses approximately 45-acres within the Town of Frederick, at the intersection of Colorado Boulevard and State Highway 52. The original URA Plan's Impact Report projected that by 2020, approximately 429,175 square feet of commercial space would have been constructed. However, only 5,381 SF has been developed within the Plan area to date. This report evaluates a proposed development that will better align with the Miner's Village URA Plan's original expectation for construction within the renewal area.

Evergreen Devco Inc (Evergreen) is proposing a retail commercial center named the "Silverstone Commercial Project". Evergreen envisions a large, retail commercial center scaled appropriately to the Town of Frederick. The proposed development will feature multiple commercial buildings, related structures and public improvements that include off-site infrastructure improvements. The development's financial plan estimates that this development will generate an estimated 180,863 square feet of new commercial space within the Town, with a majority of that space being sales tax producing.

The developer intends to pay for off-site infrastructure improvements and a share of on-site improvements with revenues generated by a metropolitan district mill levy, tax increment financing, and an operations carve-out. The developer provided a financial plan created by Piper Sandler that outlines this development's expected revenues, costs and bonding capacity.

SEH evaluated this development on behalf of the Frederick Urban Renewal Authority to determine the financial support required for feasibility. This analysis reviewed and provided independent research regarding the following assumptions:

- Independent verification for market assumptions presented in the development proposal
- Construction costs estimates verification
- Property tax valuation
- Sales tax valuation
- Projected tax increment generated
- Financial gap analysis; and
- Prepare a briefing regarding research, analysis, and recommendations

This report evaluated all the assumptions listed above. Its conclusion is that the proposed development can be made financially feasible in partnership with FURA. The Silverstone Commercial Project's expected TIF eligible costs closely match its expected property and sales TIF generation. The partnership will therefore close the expected funding gap preventing the development's feasibility. In offsetting TIF eligible expenses, FURA can ensure that this development progresses and remediates blight throughout the Miner's Village Plan area. The Silverstone Commercial project also aligns with the Miner's Village Urban Renewal Plan's original goal of incentivizing commercial development within its boundary. The TIF revenue will have the added benefit of keeping the metropolitan district millage rates lower, which in turn will make the commercial center more financially attractive to future tenants. The following report explains these findings in detail.

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Gap Financing Analysis

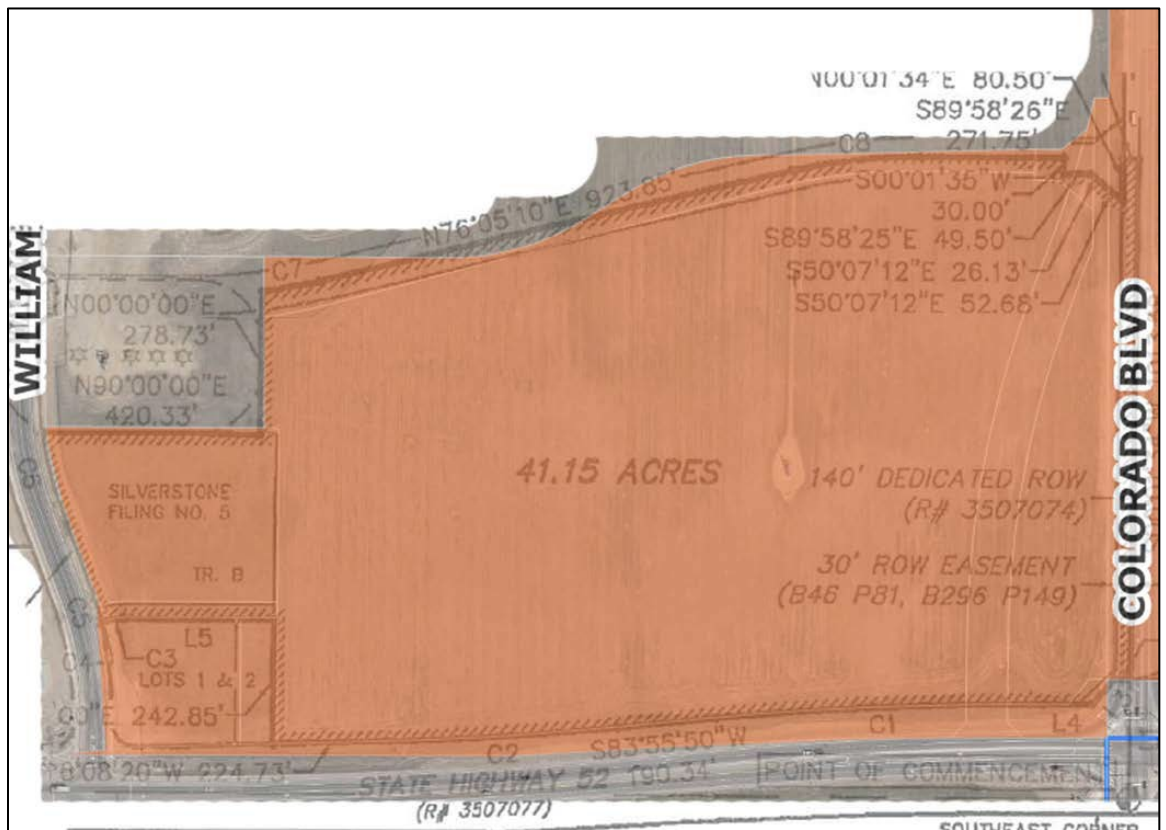
Miner's Village Urban Renewal Plan

Prepared for the FURA Board of Commissioners

1 Miner's Village Urban Renewal Plan Summary

1.1 Plan Area

The Miners Village Urban Renewal Plan's proposed boundary encompasses 45.21-acres within the Town of Frederick, which includes 12 parcels and public right of way. The developable area is estimated to be 35.2 acres.



1.2 Current Assessment of Plan Area

The survey area includes 12 parcels¹. The total actual value of these parcels, according to the Weld County Assessor's database, is \$853,495. The current equalized assessed value of this area is \$247,320.

Five (5) parcels within this area are classified as Tax Exempt, four (4) are agricultural, and two (2) are commercial. Only one parcel within the area has a building improvement value. This is the Circle K gas station built in 2021.

Although the original plan document lists the Miner's Village Urban Renewal Project with a Base Value of \$1,732 in 2015², this value is incorrect. The base year in the plan was never adjusted to account for the market value of agriculturally assessed land.

This report reviewed the Plan area's base value with the Weld County Assessor. The Assessor's office explained that the **correct base value for the Miner's Village Urban Renewal Plan area is \$479,423**. This report uses this base value for all tax increment financing projections.

1.3 Current Mill Levy and TIF Agreements within Plan Area

The Miner's Village Urban Renewal Plan is within Weld County's 5323 Tax Area. This area carries a cumulative millage rate of 122.517 as of 2022. The Miner's Village Urban Renewal Plan has signed TIF agreements with this tax area's associated tax entities. These TIF agreements determine the millage rate eligible for tax increment financing purposes (the millage rate retained by FURA, with the remainder being remitted back to participating tax entities).

The participating taxing entities and their TIF agreements are listed in the table below:

Tax District Name	2022 Mill Levy	TIF Agreement %	TIF Eligible Mill Levy
CARBON VALLEY REC	4.427	0%	0
FREDERICK TOWN	6.555	100%	6.555
FREDERICK-FIRESTONE FIRE	13.9	0%	0
FREDERICK-FIRESTONE FIRE (BOND 2022)	0.469	0%	0
HIGH PLAINS LIBRARY	3.197	100%	3.197
NORTHERN COLORADO WATER (NCW)	1	0%	0
SCHOOL DIST RE1J-LONGMONT	57.358	44%	24.995
ST VRAIN SANITATION	0.473	0%	
WELD COUNTY	15.038	50%	7.519
	102.417	41%	42.266

¹ This includes parcels that are former ROW as well as state-owned parcels near Hwy 52.

² Miner's Village Urban Renewal Plan, page 2.

2 Methodology

This report focused on verifying tax increment projections, derived from both property and sales tax, and compared these projections with the development's TIF eligible construction costs. These costs were highlighted by the developer as the public improvements that require financial assistance to complete the Silverstone Commercial project. This report also considers additional revenue sources, such as the metro district mill, the proposed operations carve-out, and the potential for additional TIF generation from other sites within the Miner's Village URA project area. The Credit and Add-On PIF is not evaluated by this report as it is outside the purview of FURA's financial assistance.

Evergreen provided drawings and masterplans of the finished project along with a financial plan for bonding prepared by Piper Sandler. The reviewers conducted independent research into market conditions and development costs to establish a market baseline for evaluating the projected project operations. The developers made themselves readily available to discuss project concepts, market positioning, costs, revenues, and other assumptions underlying their projections. Potential financial gaps are estimated by the reviewers through independent assessment and tax increment financing analysis targeting the TIF eligible construction costs.

3 Project Assumptions

- The Silverstone Commercial project is assumed by the Reviewer to be a large, retail commercial center that will be constructed entirely within the Miner's Village Urban Renewal Plan area.
- The proposed development will feature 11 commercial buildings on the 35.2-acre site. These building improvements will equal 180,863 square feet of commercial space. 168,363 square feet is assumed to be retail commercial space.
- The developer, Evergreen Devco Inc., has purchased the necessary parcels to complete this development as proposed.
- The developer, Evergreen Devco Inc., will construct all on-site and off-site improvements. The development is required to meet the Town's zoning and land use code standards regarding off-site improvements and on-site improvements. This includes public surface transportation infrastructure improvements, parking requirements, and multi-modal amenities.
 - The developer, Evergreen Devco Inc., will be required to construct a signalized intersection at the project's eastern access to Colorado Boulevard, and the project's southern access to State Hwy 52.
 - The developer, Evergreen Devco Inc., will be required to construct and improve 13th Street.
 - The developer, Evergreen Devco Inc., will be required to improve the existing intersection with Colorado Blvd and Hwy 52.
- The proposed development will meet the Town's 360-degree architectural requirements and signage requirements.
- The proposed development will take four years to complete. Phasing has been determined for specific properties within the development.



Silverstone Commercial Development conceptual layout. This analysis excludes the Anchor Lot West, as well as Pads K and J.

Silverstone Commercial Project Summary

Lot	Acreage	Lot SF	Net Lot SF	Bldg Imp SF	FAR	Phase Year	Value Per SF	Estimated Total Assessed Value	Estimated Taxable Value	Comparable
A	1.348	58,719	39,342	10,500	0.27	2025	\$250	\$2,625,000	\$761,250	Retail Shops
B	1.228	53,492	35,839	4,500	0.13	2025	\$250	\$1,125,000	\$326,250	Bank
C	1.285	55,975	37,503	4,500	0.12	2025	\$450	\$2,025,000	\$587,250	Fast Food
D	1.072	46,696	31,287	3,000	0.10	2025	\$450	\$1,350,000	\$391,500	QSR
E	0.962	41,905	28,076	2,700	0.10	2025	\$450	\$1,215,000	\$352,350	QSR
F	1.136	49,484	33,154	2,200	0.07	2026	\$475	\$1,045,000	\$303,050	Coffee
G	1.475	64,251	43,048	8,000	0.19	2026	\$240	\$1,920,000	\$556,800	Medical Office
H	1.453	63,293	42,406	9,750	0.23	2026	\$225	\$2,193,750	\$636,188	Auto Service
I	1.4	60,984	40,859	4,791	0.12	2026	\$331	\$1,585,821	\$459,888	Car Wash
Retail (Anchor)	1	43,560	29,185	7,200	0.25	2025	\$215	\$1,548,000	\$448,920	Retail Pad
Anchor East	10	435,600	291,852	123,722	0.42	2025	\$156	\$19,300,632	\$5,597,183	Large Retail

4 Development Costs

Evergreen Devco Inc. provided SEH with conceptual construction cost estimates for the Silverstone Commercial Project. The cost estimates were prepared by Mark Young Construction LLC. These estimates were evaluated by SEH to determine their reasonableness given current and projected market conditions.

The Silverstone Commercial Project's construction costs are priced appropriately and deemed reasonable to the Reviewers. The costs are conservative, and in some cases, lower than expected. In this sense, the development costs are not arbitrarily inflated, which could yield larger than warranted financial gaps.

The total development costs for the project are estimated at \$20,900,228. The costs eligible for TIF reimbursement are estimated at \$8,979,781. The developer's TIF eligible costs include off-site infrastructure improvements that will improve traffic circulation and safety along Colorado Boulevard and Hwy 52, and extend 13th Street to connect with Colorado Blvd and William Bailey Ave. These off-site improvements will include the creation and replacement of signalized intersections at Colorado Blvd and 13th Street, Colorado Blvd and Hwy 52, and Hwy 52 and William Bailey Avenue. The costs also include a portion of on-site improvements that will extend dry and wet utilities throughout the site, and provide sidewalks, drainage, soil compaction, and water treatment. Only a portion of these costs will be paid with the Public Private Partnership Funding. The remainder will be paid for by the developer and future tenants, are a labeled "Shared Costs".

The Silverstone development's TIF eligible costs are listed as "Public Private Partnership, P3, Costs" in the table below:

Miner's Village URA Plan Development Costs	
<u>Key Development Costs</u>	<u>Estimated Total Cost</u>
Colorado Blvd	\$ 2,096,977
Intersection (Colorado Blvd and Hwy 52)	\$ 1,028,010
Hwy 52	\$ 1,648,958
13th Street	\$ 2,188,981
Utilities	\$ 2,437,466
On-Site Work	\$ 2,982,059
TOTAL	\$ 12,382,451
<u>Shared Costs (Developer's Share)</u>	
<i>Utilities</i>	\$ 675,880
<i>On-Site Work</i>	\$ 2,726,790
TOTAL	\$ 3,402,670
<u>Public Private Partnership (P3) Costs</u>	
TOTAL	\$ 8,979,781

5 Tax Increment Financing Projections

5.1 TIF Summary

The Miner's Village Urban Renewal Plan was adopted in 2015. This Plan made property and sales tax revenues eligible for urban renewal activities. Key inputs for determining a development's TIF within the Miner's Village Plan area are listed below:

- The Miner's Village URA Plan area is within Weld County's 5253 Tax Area. The millage rate is 122.517.
- Miner's Village TIF Agreements remit 59% of all incremental property tax to participating tax entities.
- The Town of Frederick has a 3.5% sales tax rate, of which only 2% is eligible for urban renewal activities.
- The Miner's Village URA Plan will sunset in 2040. Starting in 2023, there are 18 years remaining on the TIF-Clock. The final property tax TIF collection will occur in 2041.
- The Base Value for Miner's Village URA Plan is \$479,423 (according to the Weld County Assessor).
- New Construction is assessed at the end of the Calendar Year, December 31st. This means that development completed in 2024 may not produce incremental revenues until 2025.

5.2 Property Tax Valuation

This report evaluated the expected taxable value of the Silverstone Commercial project by reviewing the developer's financial plan, market comps, and the Weld County Assessor's database.

The Silverstone Commercial Development is expected to yield 11 commercial structures totaling 180,863 square feet. This includes an estimated 163,363 square feet of retail commercial space (ie sales tax producing space). The expected tenants for this commercial development ranged from anchor tenants to multi-tenant shopping centers, to banks, offices, and car washes. Seven of the eleven commercial buildings are expected to be completed by 2024, with the remainder completed in 2025. This means that the first collection year for property tax increment begins in 2025 and is completed in 2026.

SEH compared the developer's financial plan prepared by Piper Sandler with various resources. These included CoStar reports on specific commercial development types throughout the Carbon Valley, Weld County's Assessor database, and also a November 2021 market study focused on a comparable development near Wheat Ridge, Colorado³.

Using estimated assessment values per square foot based on comparable properties, SEH estimated the following for property tax assessments and incremental revenue for the Silverstone

³ This market study was prepared by PGAV Planners for Evergreen Devco Inc. and the Wheat Ridge Urban Renewal Authority

Commercial Project in the Miner's Village URA Plan. These estimates assume a 3% inflation factor:

Property Tax Increment Projections	
Base Value	\$479,423
New Improvement Value (Taxable Value)	\$10,420,629
TIF Mill Levy	42.266
Gross Property Tax Increment	\$7,584,356

5.3 Sales Tax Valuation

The Town of Frederick has a sales tax rate of 3.5%. However, only 2% of this sales tax rate can be used to support Urban Renewal Activities. SEH projected sales tax generation from the Silverstone Commercial project assuming that 87.5% of the Town's 2% sales tax rate can be leveraged for TIF.

There is an estimated 168,363 square feet of commercial space in the proposed development. The same comparable properties from the property tax valuation were used in determining the estimated sales per square foot for each commercial use⁴. The average sales per square foot among all comparable uses equaled \$273 per SF, although each uses' comparable sales per square foot were used to calculate total sales tax generation within the development.

The following table illustrates the key inputs and estimated gross sales tax generated by the Silverstone Commercial Property.

Sales Tax Increment Projections	
Sales Tax Square Footage	168,363
Average Sales Per Sq.Ft.	\$273
Sales Tax %	2.00%
TIF Share	87.50%
Gross Sales Tax Increment	\$10,873,152
Gross Sales Tax FURA Retains	\$1,553,308

⁴ Large Retail and gas station comparable properties had their sales per SF reduced to account for tax exempt sales.

6 Gap Funding Analysis

SEH evaluated this project's gap funding by comparing the estimated development costs eligible for tax increment financing reimbursement with the estimated property and sales tax TIF generated by the Silverstone Commercial Project.

The developer, Evergreen Devco Inc, is anticipating to bond for the public improvements using a combination of metro district revenues, tax increment financing revenue, PIF, and an operations carve out. This analysis did not evaluate the bonding capacity given the development's projected property and sales tax increment. Instead, SEH calculated the net present value (NPV) of the tax increment revenue using a 7% interest rate. This value provides FURA with a means of comparing the development's current construction costs with the projected TIF revenue the development will generate over the remainder of the Miner's Village Urban Renewal Plan.

The following table illustrates the Silverstone Commercial Project's estimated TIF as a present value:

TIF Net Present Value	
Estimated Property Tax TIF (Gross)	\$7,584,356
Estimated Property Tax TIF (NPV @ 7%)	\$3,849,526
Estimated Sales Tax (Gross)	\$10,873,152
Estimated Sales Tax TIF (NPV @ 7%)	\$5,213,410
TOTAL ESTIMATED TIF (NPV @ 7%)	\$9,062,936

Using the estimated NPV of the Silverstone Commercial Project's total TIF projection, SEH compared the development's TIF eligible costs with the conceptual construction costs:

Development Cost Total = \$8,979,781

Estimated TIF (NPV @ 7%) = \$9,062,936

Estimated Gap = \$83,155

7 Additional Considerations

The funding gap analysis excludes additional revenues that should be considered by FURA when evaluating the funding incentives to be applied to the Silverstone Commercial Project.

- **Metro District Revenues:** The developer indicated in their financial plan that the metro district will levy up to 36 mills to help pay for the debt service on the bonds to be issued. This will provide the development with an additional source of revenue. However, it should be noted that additional metro district mills in a commercial development make it less attractive to potential tenants, as this increases property taxes and is “passed through” to the tenants in the form of NNN leases. The more TIF revenue the development can utilize; the less metro district mills it would be required to levy. This will likely make the development more competitive for attracting businesses.
- **Operations Carve Out:** The developer includes an “Operations Carve Out” of \$75,000 annually in their financial plan, with a 1% growth rate. The developer explained during an interview with SEH that this carve-out is intended to help fund landscaping operations and maintenance throughout the development. This will provide a consistent cash flow for landscaping operations and maintenance without placing that cost burden on future commercial tenants. The developer is worried that without the carve-out, they would need to raise the metro district millage rate, making the development less attractive to prospective tenants.
- **PIF Add-On:** The developers financial plan includes a 1% Add-On PIF. This PIF is dependent on a negotiation with the Town of Frederick but could add an additional revenue source for this development.
- **Additional Property TIF Generation:** This report’s analysis only projected TIF given specific assumptions provided by the developer and FURA. However, this development could generate additional property and sales tax TIF. The Silverstone Commercial Project includes three additional commercial pads that were not included in these projections. These pads include the West Anchor site, Pad K, and Pad J. Collectively, the development of these pads could significantly increase property tax increment within the Miner’s Village URA Plan area. This would more than close any financial gap experienced by this development.
- **Additional Sales TIF Generation:** FURA has the ability to increase the sales tax increment shared with the Silverstone Commercial Project. This report forecasted sales tax increment based on an 87.5% share of the Town’s 2% tax rate. If FURA were to increase the development’s share to 100%, SEH estimates that the Silverstone Commercial Project would generate an additional \$97,082 in sales tax increment annually. This additional sales tax increment would more than offset the operations carve-out and would further help to close financial gaps.

8 Conclusion

The Silverstone Commercial Development represents the type of development first envisioned by the Miner's Village Urban Renewal Plan. This development has the potential to attract large retail tenants to the Town, helping to remediate blight throughout the Miner's Village Plan area and in turn, generate economic development for the community.

This analysis found that the development's construction costs associated with a public private partnership with the Town were reasonable and not inflated. This analysis also determined that the development's property and sales tax increment would closely match this development cost's present value, helping to make the project financially feasible.

The Reviewers recommend that the Frederick Urban Renewal Authority pledge 100% of the property tax increment generated by the Silverstone Commercial Project to help off-set TIF eligible construction costs. The Reviewers also recommend sharing at least 87.5% of the sales tax increment with this development to effectively close the cost for eligible public improvements on and off-site. FURA may wish to consider sharing 100% of the sales tax increment in lieu of the operations carve out being proposed by the developer.

In conclusion, this report finds the proposed development to have a legitimate funding gap that is effectively offset by FURA's TIF incentives at the recommended property tax and sales tax share.

Gap Financing Analysis Pro Forma

Miner's Village URA Plan

Combined Annual Proforma

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