FURA **FIRESTONE URBAN RENEWAL AUTHORITY**

# REGULAR MEETING AGENDA

March 16, 2022
6:30 PM
9900 Park Avenue
Firestone, CO 80504

1. **Call to Order & Roll Call**

2. **Pledge of Allegiance**

3. **Approval of Agenda**

4. **Public Comment** * (maximum time permitted for all Public Comment is 30 minutes)

5. **Consent Agenda**

   **a.** Approval of February 16, 2022 Meeting Minutes

6. **Discussion/Action**

   **a.** **FURA RESOLUTION NO. 2022-03:** A RESOLUTION APPROVING THE REDEVELOPMENT AND REIMBURSEMENT AGREEMENT BY AND BETWEEN THE FIRESTONE URBAN RENEWAL AUTHORITY, AND TSG DEL CAMINO JUNCTION, LLC

7. **Adjournment**

* Individuals that desire to address the Firestone Urban Renewal Authority are requested to sign up at the table at the entrance to the meeting room. Each individual will be provided an opportunity to speak (limited to two minutes) during Public Comment. Maximum time permitted for all Public Comment is 30 minutes for each Public Comment noted on Agenda.

If you need special assistance in order to participate in a Firestone Urban Renewal Authority meeting, please contact the Town Clerk's Office at 303-833-3291 in advance of the meeting to make arrangements. A forty-eight-hour notice is requested.

| AGENDA INFORMATION MEMORANDUM<br>FURA | **AIM#:** 5.a<br>**Consent Agenda**<br>**Meeting Date:** March 16, 2022<br>**Initiated By:** Jessica Koenig<br>**Dept:** Town Clerk |
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**AGENDA TITLE**
Approval of February 16, 2022 Meeting Minutes

**SUMMARY**

**HISTORY AND PREVIOUS BOARD ACTION**

**RECOMMENDATION**
Approval of February 16, 2022 draft meeting minutes.

**ALTERNATIVES**

**ATTACHMENTS**
1. February 16, 2022 Draft Meeting Minutes

**FINANCIAL CONSIDERATIONS**

TOWN OF FIRESTONE, COLORADO
Firestone Urban Renewal Authority Regular Meeting
MINUTES
February 16, 2022

## 1. Call to Order & Roll Call

The Firestone Urban Renewal Authority of the Town of Firestone met for a Regular Meeting on February 16, 2022, at the Police Department & Municipal Court building, 9900 Park Avenue, Firestone, Colorado. Chair Conyac called the meeting to order at 6:33 PM.

The following were present upon the call of the roll:

**Chair:** Don Conyac
**Vice-Chair:** Sean Doherty
**Commissioners:**
Frank A. Jimenez
Doug Sharp
David Whelan
Bobbi Sindelar
Scott James **- absent**
Chico Garcia -**excused**
Ed Weimer
Samantha Meiring

## 2. Pledge of Allegiance

Chair Conyac led the pledge of allegiance.

## 3. Approval of Agenda

**Motion** by Commissioner Sindelar, **second** by Commissioner Whelan, to Approve the Agenda, All in Favor, **Motion carried**.

## 4. Public Comment * (maximum time permitted for all Public Comment is 30 minutes)

There was no one present that wished to give public comment.

## 5. Consent Agenda

**Motion** by Vice-Chair Doherty, **second** by Commissioner Meiring, to Approve the Consent Agenda All in Favor, **Motion carried**.

**a.** Approval of January 19, 2022 Meeting Minutes

## 6. Discussion/Action

**a. PUBLIC HEARING: <u>FURA RESOLUTION 2022-02:</u>** A RESOLUTION OF THE FIRESTONE URBAN RENEWAL AUTHORITY AMENDING THE ANNUAL BUDGET FOR THE FIRESTONE URBAN RENEWAL AUTHORITY FOR FISCAL YEAR 2021

Chair Conyac opened the public hearing at 6:37 PM.

Jessica Clanton presented to the Firestone Urban Renewal Authority.

There was no one present that wished to give public comment.

The public comment portion of the public hearing ended at 6:42 PM.

**Motion** by Commissioner Meiring, **second** by Commissioner Whelan, to Approve **FURA RESOLUTION 2022-02:** A RESOLUTION OF THE FIRESTONE URBAN RENEWAL AUTHORITY AMENDING THE ANNUAL BUDGET FOR THE FIRESTONE URBAN RENEWAL AUTHORITY FOR FISCAL YEAR 2021

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Meiring, Trustee Whelan, Mayor Pro Tem Jimenez, Trustee Doherty, Mayor Sindelar, Trustee Sharp, Commissioner Weimer

**No:** None

**Abstain:** None

**Motion carried.**

## 7. Adjournment

**Motion** by Commissioner Sharp, **second** by Commissioner Doherty, to Adjourn at 6:45 PM, All in Favor, **Motion carried**.

Introduced and Approved the 16th of March, 2022

TOWN OF FIRESTONE, COLORADO

ATTEST

Don Conyac, Chair

Jessica Koenig, Secretary

| AGENDA INFORMATION MEMORANDUM | **AIM#:** 6.a<br>**Discussion/Action**<br>**Meeting Date:** March 16, 2022<br>**Initiated By:** Paula Mehle<br>**Dept:** FURA |
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**AGENDA TITLE**

**FURA RESOLUTION NO. 2022-03:** A RESOLUTION APPROVING THE REDEVELOPMENT AND REIMBURSEMENT AGREEMENT BY AND BETWEEN THE FIRESTONE URBAN RENEWAL AUTHORITY, AND TSG DEL CAMINO JUNCTION, LLC

**SUMMARY**

*Materials to follow...*

The request is to approve a negotiated redevelopment and reimbursement agreement to reimburse a portion of tax increment revenue with the developers, TSG Del Camino Junction, LLC, of two parcels located along the north side of Firestone Boulevard, east of E. I-25 Frontage Road, comprised of approximately 33 acres of commercially zoned property. The project will include 12 retail pad sites and approximately 12 acres that could support a retail space of 125,000 square feet.

**HISTORY AND PREVIOUS BOARD ACTION**

The associated parcels in the agreement are located within the Northern Firestone Urban Renewal Area that was formed by the Town of Firestone Board of Trustees' approval of Resolution No.13-32 on June 12, 2013.

**RECOMMENDATION**

Staff recommends that the Board of Commissioners of the Firestone Urban Renewal Authority approve a redevelopment and reimbursement agreement with TSG Del Camino Junction, LLC.

**ALTERNATIVES**

**ATTACHMENTS**

1. FURA Resolution 2022-03
2. Redevelopment and Reimbursement Agreement, TSG Del Camino Junction, LLC

**FINANCIAL CONSIDERATIONS**

The maximum reimbursement amount shall not exceed $6.5 million of available tax increment revenues, nor extend beyond the remaining term of the Northern Firestone Urban Renewal Area, whichever occurs first.

FURA RESOLUTION NO. 2022-03

A RESOLUTION APPROVING THE REDEVELOPMENT AND REIMBURSEMENT AGREEMENT BY AND BETWEEN THE FIRESTONE URBAN RENEWAL AUTHORITY, AND TSG DEL CAMINO JUNCTION, LLC

WHEREAS, the Firestone Urban Renewal Authority ("FURA") is a public body corporate and politic organized as of July 24, 2009, and authorized to transact business and exercise its powers as an urban renewal authority under and pursuant to the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S. (the "Act"); and

WHEREAS, more specifically, FURA has undertaken to eliminate and prevent blight and to prevent injury to the public health, safety, morals, and welfare of the residents of the Town of Firestone, Colorado (the "Town"); and

WHEREAS, the Town Board of Trustees adopted its Resolution 13-32 on June 12, 2013 approving the Northern Firestone Urban Renewal Plan (as amended, the "Plan"), which guides the elimination and prevention of conditions of blight in the area described in the Plan (the "Plan Area"); and

WHEREAS, FURA is authorized under the Plan and the Act to utilize incentives and to expend incremental property tax revenues in order to provide for the redevelopment of the Plan Area and promote improvements of properties in the Plan Area; and

WHEREAS, TSG Del Camino Junction, LLC, a Missouri limited liability company (the "Developer") is the contract purchaser of certain real property located within the Plan Area (the "Property"); and

WHEREAS, in furtherance of the Plan, the Developer intends to renovate and redevelop the Property by causing the construction and operation of a commercial shopping center consisting of an approximately 125,000 square feet plus 12 out parcels, which will include retail, restaurant and service; and

WHEREAS, FURA, finding development of the Property within the Plan Area to be within the best interest of FURA and the health, safety, and welfare of the citizens of the Town, intends to provide certain incentives to the Developer in order to facilitate the redevelopment of the Property with the expectation that FURA's involvement will encourage and accelerate the timing of development, thus providing substantial direct and indirect benefits to the Town, its citizens, and the surrounding area in numerous ways, and furthering the elimination and prevention of conditions of blight; and

WHEREAS, FURA wishes to ensure development of the Property is financially feasible and successful by providing financial assistance to the Developer with funds generated from the collection of incremental property taxes levied upon the Property; and

WHEREAS, in order to further the purposes of the Act and the Plan, FURA and the Developer desire to enter into a Redevelopment and Reimbursement Agreement (the "Reimbursement Agreement"), attached hereto and made a part hereof as Exhibit A, which outlines various forms of incentives and financial assistance in accordance with the Plan and the Act.

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE FIRESTONE URBAN RENEWAL AUTHORITY AS FOLLOWS:

**Section 1.** That FURA hereby makes and adopts the determinations and findings contained in the Recitals set forth above.

**Section 2.** Pursuant to the Act, it is the opinion of FURA that the Reimbursement Agreement, in substantially the form attached hereto, is in the best interest of FURA, furthers the implementation of the Plan, and is necessary for development or redevelopment of the Plan Area and the prevention and elimination of blight within the Plan Area.

**Section 3.** FURA has duly considered and hereby approves the Reimbursement Agreement, in substantially the form attached hereto, and directs and authorizes the Chair to execute the Reimbursement Agreement on behalf of FURA, subject to technical additions, deletions and variations as the Special Counsel to FURA may determine to be necessary and appropriate to protect the interests of FURA or to the effectuate the purposes of this Resolution.

**Section 4.** That the Chair is authorized to execute any related documents or certificates necessary in connection with the transactions contemplated by the Reimbursement Agreement.

**Section 5.** This Resolution shall be effective immediately upon its adoption.

INTRODUCED, READ, and ADOPTED this ____ day of March, 2022.

FIRESTONE URBAN RENEWAL AUTHORITY,
a body corporate and politic of the State of Colorado

By: ___________________________________
Donald D. Conyac, Jr.
Title: Chairperson

ATTEST:

By: ______________________________
Jessica Koenig, Recording Secretary

EXHIBIT A

REDEVELOPMENT AND REIMBURSEMENT AGREEMENT
[*see attached - 21 pages]*

**REDEVELOPMENT AND REIMBURSEMENT AGREEMENT**
**BY AND BETWEEN**
**THE FIRESTONE URBAN RENEWAL AUTHORITY**
**AND TSG DEL CAMINO JUNCTION, LLC**

THIS REDEVELOPMENT AND REIMBURSEMENT AGREEMENT (the "Agreement") is made and entered into as of ___________, 2022 ("Effective Date"), by and between the **FIRESTONE URBAN RENEWAL AUTHORITY**, a body corporate and a political subdivision of the State of Colorado (the "FURA"), and **TSG DEL CAMINO JUNCTION, LLC**, a Missouri limited liability company (the "Developer").

## RECITALS

WHEREAS, FURA is a public body corporate and politic organized as of July 24, 2009, and authorized to transact business and exercise its powers as an urban renewal authority under and pursuant to the Colorado Urban Renewal Law, Part 1 of Article 25 of the Title 31, C.R.S. ("Act"); and

WHEREAS, more specifically, FURA's powers include activities and undertakings to eliminate and prevent blight and to prevent injury to the public health, safety, morals, and welfare of the residents of the Town of Firestone, Colorado (the "Town"); and

WHEREAS, the Developer is the contract purchaser of two parcels of property referred to as Weld County (as defined below) Assessor Tax Parcel Nos. 131302314001 and 131302316001 as more specifically described in **Exhibit A** attached hereto and included herein (the "Del Camino Junction Properties" or "Property"); and

WHEREAS, the Property is located within the area described in the Northern Firestone Urban Renewal Plan (the "Plan Area"); and

WHEREAS, the Plan Area also contains thirteen parcels of property associated with the Firestone City Centre project, referred to as Weld County Assessor Tax Parcel Nos. 131311209005, 131311209001, 131311209002, 131311209004, 131311210001, 131311210002, 131311111001, 131311111002, 131311110002, 131311109012, 131311109014, 131311206004, and 131311000075 as more specifically described in **Exhibit A** attached hereto and included herein (the "Firestone City Centre Properties"); and

WHEREAS, FURA is authorized under the Plan and the Act to utilize incentives and to expend incremental property tax revenues in order to promote and encourage development activity by private enterprise within the boundaries of the Plan Area; and

WHEREAS, in furtherance of the Plan, the Developer intends to renovate and redevelop the Property by causing the construction and operation of a commercial shopping center consisting of approximately 125,000 square feet and 12 out parcels , which will include retail, restaurant and service , as further described and depicted in **Exhibit B** (the "Project"); and

WHEREAS, FURA, finding development of the Property within the Plan Area to be within the best interest of FURA, and the health, safety, and welfare of the citizens of the Town, intends to provide certain incentives to the Developer in order to facilitate the redevelopment of the Property with the expectation that FURA's involvement will encourage and accelerate the timing of development, thus providing substantial direct and indirect benefits to the Town, its citizens, and the surrounding area in numerous ways; and

WHEREAS, FURA wishes to ensure development of the Property is financially feasible and successful by providing financial assistance to the Developer with funds generated from the collection of incremental property taxes levied upon the Property and the Firestone City Centre Properties; and

WHEREAS, the Parties intend this Agreement to set forth: (i) the public finance structure made available to the Developer to ensure that blight is cured and the Plan Area is redeveloped; (ii) the respective roles and responsibilities of FURA and the Developer to finance, develop and construct the various components of the Project; and (iii) the timetable for implementation of the incentives described herein and the financing and construction of the Project.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties mutually agree as follows:

**Section 1. Incorporation of Recitals.** The Recitals to this Agreement are true and correct and are incorporated herein by this reference as though fully set forth in the body of this Agreement.

**Section 2. Capitalized Terms and Definitions.** Capitalized terms in this Agreement have the meanings set forth in this Section 2, or otherwise defined herein, unless a different meaning clearly appears from the context:

"Act" means the provisions of the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S.

"Available Tax Increment Revenues" means, commencing as of the Effective Date, 95% of the following revenues, if any, received by FURA as calculated in accordance with **Exhibit D** each year for the Duration from the annual property tax assessment levies of the following taxing entities in excess of the Property Base Value and in excess of the Firestone City Centre Properties Base Value, respectively: (a) 100% of the property tax increment revenues generated by the levy of the Town; (b) 50% of the property tax increment revenues generated by the levy of Weld County; and (c) 100% of the property tax increment revenues generated by the levy of St. Vrain Valley School District RE-1J (the "School District"), but excluding any revenue generated by any future School District mill levy override, offsets collected by the County Treasurer for return of overpayments, reserve funds retained by FURA for such purposes, and future bonded indebtedness levy in accordance with Sections 31-25-107(9)(a)(III) and (b) of the Act.

"Bond Documents" means, collectively, the documents pursuant to which any Bonds are issued or otherwise documented and memorialized, including any Bonds described in Section 13.

"Bonds" shall have the same meaning as defined in the Act.

"Completion of Construction" means the date that is the last to occur of the following: (i) the Developer providing FURA with a signed, written statement confirming that all of the improvements which are Eligible Costs have been substantially completed in accordance with this Agreement and the Construction Documents; and (ii) the Developer providing FURA with a signed, written statement from a professional engineer, confirming that the Developer complied with fiscal and construction requirements related to Completion of Construction.

"Construction Documents" means the final plans, drawings, and specifications, and all modifications thereto, to the extent required by the Town, for the Eligible Costs listed on **Exhibit C**.

"County" means, individually or collectively as applicable, the Weld County Assessor, the County Treasurer, and the Tax Administrator.

"County Assessor" means the Weld County Assessor's Office.

"County Treasurer" means the Weld County Treasurer's Office.

"Del Camino Junction Properties" see definition of "Property" below.

"Developer" has the meaning set forth in the initial paragraph of this Agreement.

"Duration" means the 25-year period that FURA will receive Available Tax Increment Revenues pursuant to the Act and the Plan.

"Effective Date" means the date listed in the first paragraph of this Agreement.

"Eligible Costs" means all reasonable and necessary costs, including soft costs and interest and any costs of issuance required by Bond Documents, as certified by the Developer for the line items listed in **Exhibit C.**

"Firestone City Centre Properties" has the meaning set forth in the Recitals of this Agreement, and as described and depicted in **Exhibit A** attached hereto.

"Firestone City Centre Properties Base Value" means $2,500,000.00. The Firestone City Centre Properties Base Value will be used to calculate Pledged Revenues for the Term.

"FDP" means Final Development Plan as defined in Town codes and regulations related to planning and building requirements.

"FURA" has the meaning set forth in the initial paragraph of this Agreement.

"Gross Retail/Commercial Area" means approximately 125,000 gross square feet plus 12 out parcels available to be sold or leased to retail/commercial tenants, including restaurants.

"Maximum Reimbursement Obligation" means the lowest and earliest reached of any of the following: (i) $6,500,000.00 in Eligible Costs; or (ii) the total amount of Pledged Revenues collected, deposited, and accumulated in the Special Account during the Term.

"Party(ies)" means, individually or collectively as applicable, FURA and the Developer.

"Plan" means the Northern Firestone Urban Renewal Plan.

"Plan Area" means the area of land within the boundaries of, and described within, the Plan. The Property and Firestone City Centre Properties are included within the Plan Area.

"Plan Area Base Value" means the total assessed value of the entire Plan Area as certified by the County when the Plan was approved and as adjusted from time to time in accordance with C.R.S. 31-25-107(9)(e).

"Pledged Revenues" means all Available Tax Increment Revenues received by FURA each year for the Duration, which revenues are irrevocably pledged to payment of the Maximum Reimbursement Obligation under this Agreement.

"Project" means the scope of work as described in **Exhibit B** attached hereto, as may be modified by the Developer with the written consent of the FURA Board.

"Property" has the meaning set forth in the Recitals of this Agreement, and as described and depicted in **Exhibit A** attached hereto.

"Property Base Value" means $91,160.00. The Property Base Value will be used to calculate Pledged Revenues for the Duration.

"Reimbursement Obligation" means FURA's obligation to reimburse the Developer for Eligible Costs, which shall not exceed the Maximum Reimbursement Obligation.

"Retail Use" or "Retail Uses" means a tenant that occupies the Gross Retail/Commercial Area (but not including the two permitted single tenant stand-alone outparcel buildings containing non-Retail Uses described in Section 5.f.), whereby a majority of such tenant's projected total sales revenues at the time of initial occupancy will be subject to municipal sales taxation as defined by the Town Code as of the Effective Date. For the avoidance of doubt, the following uses are not a Retail Use (but are non-Retail Uses for the purposes of Section 5.f.): (i) gyms and fitness studios, including dance, pilates, and yoga studios; (ii) hair salons and barbershops; (iii) dentist and doctor's offices; (iv) chiropractors and acupuncture; (v) massage; (vi) spas, skin care; (vii) nail salons; (viii) weight loss centers; (ix) dry cleaners, alterations and shoe repair; (x) tanning salons; (xi) pet grooming; (xii) veterinary services; (xiii) pet daycare.

"Special Account" has the meaning set forth in Section 10 of this Agreement.

"Special Fund" has the meaning set forth in Section 10 of this Agreement.

"Tax Administrator" means the Property Tax Administrator for the State of Colorado.

"Tax Increment Revenues" means, for the Duration, all property tax revenues, if any, actually received by FURA each year from the Plan Area in excess of the property tax revenues attributed to and generated from the levy of property tax by taxing entities against the Plan Area Base Value.

"Town" has the meaning set forth in the Recitals of this Agreement.

"Work" means everything required to be furnished and done by the Developer as described in the Construction Documents, including but not limited to, obtaining necessary building permits.

**Section 3.** **Term.** Unless earlier terminated as expressly provided for in this Agreement, the term of this Agreement (the "Term") shall commence on the Effective Date and will continue until the earlier of: (i) the Maximum Reimbursement Obligation is paid; or (ii) the end of the Duration as defined in this Agreement. Nothing herein will limit the ability of the Parties to enter into future amendments to this Agreement that have the effect of extending the Term. After expiration of the Term, this Agreement will be deemed terminated and of no further force and effect; provided, however, such termination will not affect any obligation of any Party which arises under this

Agreement during the Term but is not fully performed as of the end of the Term, including payment to the Developer of the Maximum Reimbursement Obligation for reimbursement of Eligible Costs from Pledged Revenues.

**Section 4.** **Eligible Costs.** Subject to the provisions of this Agreement, FURA shall reimburse the Developer for Eligible Costs up to the Maximum Reimbursement Obligation, in accordance with Section 8, from the Pledged Revenues. The estimated Eligible Costs that will be incurred for the Project are set forth in **Exhibit C**. Unless otherwise agreed to in Bond Documents, Eligible Costs paid by the Developer shall be certified by the Developer from time to time in accordance with Town requirements and procedures applicable to approval of the same or similar costs after the Effective Date as to the actual amount paid and shall be promptly reviewed and approved by the Town Engineering Department. While the costs for individual line items may increase or decrease, and Developer may allocate cost savings in the line items listed in **Exhibit C** to any cost overruns in any other line item, in no event will the total Reimbursement Obligation exceed the Maximum Reimbursement Obligation. Upon request by FURA, the Developer will provide backup documents (such as invoices and contract documents) in a form reasonably satisfactory to the Town Engineering Department.

**Section 5.** **Construction, Completion and Operation**. The Developer shall have no obligation to commence or complete construction of the Project, however, FURA agrees to reimburse the Developer for Eligible Costs from any available Pledged Revenues upon Completion of Construction. The Developer covenants and agrees to perform the redevelopment and renovation work for the Project required by this Agreement in accordance with all applicable laws, ordinances, standards, policies, and the Plan.

A. Construction Documents. As of the Effective Date, the Developer is in the process of preparing Construction Documents for Eligible Costs for submittal to the Town of Firestone Planning and Development Department. The Developer will copy FURA staff on all additional submittals which materially modify the Construction Documents relating to Eligible Costs reimbursed hereunder and shall obtain the consent of the FURA Staff to make any such material modification to the Project described on **Exhibit B**.

B. Commencement of Construction. In reliance on this Agreement, as of the Effective Date, and subject to the first sentence of Section 5 above, the Developer intends to obtain the necessary building permits for the Work in order to commence construction on the Work within 180 days of FDP approval and issuance of a building permit by the Town.

C. Completion of Construction. The Developer intends to achieve Completion of Construction by 12 months after beginning construction. The Developer acknowledges and accepts the risk that extension of and delays to the date for Completion of Construction pursuant to this Section 5.C may result in the generation of less overall Tax Increment Revenues throughout the remainder of the Term.

D. FURA Right of Access. Developer shall permit a person representing both FURA and the Town access to the Property to inspect the Work at any reasonable time during regular business hours and with prior notice to the Developer during the construction period and to determine Completion of Construction. Approvals under this section shall not be unreasonably withheld, conditioned or delayed and otherwise as required by Section 36 of this Agreement.

E. Schedule of Construction. The Developer agrees to use good faith, commercially reasonable efforts to achieve the schedule and deadlines for construction outlined in this Section 5.

F. Stand Alone Non-Sales Tax Generating Uses. The Parties agree that the improvements and uses described in the initial FDP approved by the Town may include a maximum of two (2) single tenant stand-alone outparcel buildings containing non-Retail Uses (i.e., not sales tax generating) to be developed on the Property. Unless the FURA Board and Developer agree otherwise, a majority of square footage of the parcel containing approximately 12 acres adjacent to and south of Union Street shall be developed for Retail Uses. All other multi-tenant buildings in the Project must contain at least one (1) Retail Use at the time of initial occupancy. If any of the above requirements are violated during such period of initial occupancy, FURA may withhold the payment of Pledged Revenues generated only from the applicable violating parcel until the violation is cured and such a violation will be a default hereunder.

G. Tenants. During the Term of this Agreement, the Developer agrees to use good faith, commercially reasonable efforts to pursue uses consistent with those found in similar commercial shopping centers and will provide monthly reports during the construction period to the Town Director of Economic Development on potential tenants. All information in such reports shall be treated and maintained as confidential work product and trade secrets for all purposes and shall be exempt from any public disclosure requirement.

**Section 6. Insurance.** At all times prior to Completion of Construction, the Developer, within ten (10) days after request by FURA, will provide FURA with proof of payment of premiums and certificates of insurance showing that the Developer is carrying or causing prime contractors to carry, insurance in the amounts and types acceptable to Developer and FURA. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days' advance written notice of cancellation to FURA and will include FURA as an additional insured on such policies.

**Section 7. Indemnification**. Except for negligence of FURA's inspectors, employees, agents, and other representatives, the Developer will defend, indemnify, assume all responsibility for, and hold FURA, its board members, officers, and employees harmless (including, without limitation, for attorney fees and costs) from all claims or suits for and damages to property, environmental liability, and injuries to persons, including accidental death, that may be caused by any of the construction activities under this Agreement, whether such activities are undertaken by the Developer or anyone directly or indirectly employed by or under contract to the Developer, whether such damage shall accrue or be discovered before or after termination of this Agreement.

**Section 8. Reimbursement by FURA, Maximum Reimbursement Obligation, Term, and Pledged Revenues.**

A. Reimbursement. FURA's Reimbursement Obligation to the Developer for Eligible Costs is a multiple-fiscal year obligation of FURA payable only from Pledged Revenues and shall not exceed the Maximum Reimbursement Obligation. The Reimbursement Obligation shall be paid solely from the Special Account described in Section 10 of this Agreement and any interest earned on the amounts in the Special Account during the Term. The Reimbursement Obligation shall not be paid from any other revenues of FURA. If Tax Increment Revenues are not received by FURA in any fiscal year, then no payment of Pledged Revenue shall be made for that year; provided, however, FURA shall take the steps specified in Section 11 to assure to the extent possible that Pledged Revenues shall be deposited in the Special Account each year this Agreement is in effect and the obligation to pay Pledged Revenue to or on behalf of the Developer shall carry over to the next fiscal year and each year thereafter for the Term. Reimbursement of such carryover obligations shall be paid in the order of priority, beginning with any outstanding interest compounded to the date of payment, before any amounts payable in any subsequent year for the Term.

B. Trigger for Pledged Revenues from the Property. The Developer shall be eligible to receive Pledged Revenues associated with the Property upon Completion of Construction.

C. Trigger for Pledged Revenues from the Firestone City Centre Properties. The Developer shall be eligible to receive Pledged Revenues associated with the Firestone City Centre Properties as follows: (i) 40% upon Completion of Construction of the Property; (ii) 80% upon the Property generating a one-time cumulative total of $7,000,000.00 in revenue from transactions subject to Town sales tax (as reported to the Town by the State of Colorado); and (iii) 100% upon the Property generating a one-time cumulative total of $9,000,000.00 in revenue from transactions subject to Town sales taxes (as reported to the Town by the State of Colorado).

D. Pledged Revenues. Pledged Revenues means the revenue defined in Section 2 of this Agreement, which amounts shall be calculated, collected, deposited, and maintained in the Special Account in accordance with this Section 8, Section 9, and **Exhibit D** and paid to the Developer during each year of the Term. FURA agrees to invest any funds in the Special Account in accordance with legal and contractual requirements for such public funds and any interest earned on such funds shall be added to and included in Pledged Revenues. No other tax increment financing revenues received by FURA or any other revenues received by FURA shall be considered Pledged Revenues. FURA hereby irrevocably pledges the Pledged Revenues to payment of the Reimbursement Obligation to or on behalf of the Developer as provided herein. FURA is only obligated to pay the Pledged Revenues in years that it receives Available Tax Increment Revenues. FURA shall not enter into any agreement or transaction that impairs the rights of the Developer under this Agreement and shall take all reasonable steps to defend and protect the Developer's right to receive the Pledged Revenues.

FURA hereby irrevocably pledges the Pledged Revenues to payment of FURA's Reimbursement Obligation. The Pledged Revenues, when and as received by FURA shall be subject to the lien of such pledge without any physical delivery, filing, or further act. FURA shall transfer the Tax Increment Revenues into the Special Fund and the Pledged Revenues into the Special Account as specified in Section 10 and **Exhibit D**. FURA shall keep, maintain, and apply the Pledged Revenues as required exclusively to payment of FURA's Reimbursement Obligation for the Term of this Agreement. FURA's Reimbursement Obligation established by this Agreement is and shall be an obligation of FURA pursuant to Section 31-25-101, C.R.S., et. seq. The obligation to perform the contractual provisions made herein shall have priority over any of all other obligations and liabilities of FURA with respect to the Pledged Revenues for the Term of this Agreement.

**Section 9.** **Calculation of the Pledged Revenues.** The Pledged Revenues shall be calculated and paid each year in accordance with **Exhibit D**.

**Section 10.** **Account of the Special Fund.** Pursuant to the Act and this Agreement, FURA shall promptly deposit, keep, and disburse the Tax Increment Revenues it receives in a special fund dedicated for that purpose (the "Special Fund"). Subject to the provisions of this Agreement, FURA agrees to establish, make deposits into, make disbursements from, and provide reports with respect to a special account within the Special Fund established for this Agreement (the "Special Account"). The Special Account shall include only the Pledged Revenues set forth in Section 8 of this Agreement. No other tax increment financing revenues received by FURA or any other revenues received by FURA shall be included in the Special Account. Subject to Section 9 of this Agreement, FURA agrees to promptly deposit, keep, and make disbursements of the Pledged Revenues into and from the Special Account as required by this Agreement. FURA acknowledges and agrees that the Reimbursement Obligation is a multiple fiscal-year obligation of FURA payable as required by this Agreement for the entire Term.

**Section 11.** **Methodology and Risk Allocation of the Pledged Revenue; Protests or Abatements.** The Developer understands and acknowledges that Tax Increment Revenues are remitted to FURA according to policies and procedures adopted by the Tax Administrator, the County Assessor, and the County Treasurer and based on the annual valuation of all properties located within the Plan Area. Accordingly, the timing and payment by the County to FURA of all, or some portion, of the Tax Increment Revenues is a matter that, except for reasonable steps annually to verify that all taxable property is included in County calculations and payments, is out of the control of FURA. Nothing herein is intended to be, or shall be construed as, a promise or guarantee by FURA that the Pledged Revenues will be collected and remitted to FURA in projected or anticipated amounts. FURA shall take reasonable steps to (a) provide the County Assessor with information of activities that increase the assessed value of all property within the Plan Area, including the Firestone City Centre Properties and the Property, (b) meet with the County Assessor at least annually to assist the County Assessor in calculating the total assessed value of the Plan Area and, to the extent reasonably possible, the statutorily mandated allocation of value between the Plan Area Base Value and the increment value set forth in Section 31-25-107(9) of the Act, and (c) review the calculation of assessed values and the allocation of value to the Property Base Value and the Firestone City Centre Properties Base Value each year to assure to the extent reasonably possible that all taxable property has been included in such calculations and such calculations and allocations are true and accurate.

A. Methodology. The Developer acknowledges and agrees that the Tax Increment Revenues attributable to the properties located within the entire Plan Area are calculated and remitted to FURA in the aggregate for the entire Plan Area. Therefore, FURA will use the methodology approved in writing by the Developer prior to entering into this Agreement and attached hereto and incorporated herein as **Exhibit D**, for determining and allocating the Available Tax Increment Revenues pursuant to this Agreement.

B. Allocation of Risk. The Developer acknowledges that the generation of Pledged Revenue is dependent upon completion of the Project and, except for duties imposed by this Section 11, agrees that FURA is not responsible for the amount of Pledged Revenue actually generated. So long as FURA is complying with its duties and responsibilities under this Agreement and following the methodology in **Exhibit D**, the Developer will not hold FURA responsible for the calculation of and amount of Pledged Revenues actually generated, but nothing herein shall be construed as a waiver of any right or remedy that the Developer may assert in law or equity against anyone associated with the County as defined in this Agreement.

**Section 12. Payment Procedure.** Unless otherwise provided in Bond Documents, FURA shall disburse the Pledged Revenues to or on behalf of the Developer within forty-five (45) days after receipt of the property tax bills for the Property and the Firestone City Centre Properties from the Developer and receipt of Pledged Revenues from the County Treasurer.

**Section 13. Bonds.** Upon the Developer's request, the FURA Board will consider and evaluate, but is under no obligation to approve, issuing revenue Bonds payable from Pledged Revenues in order to provide accelerated payment of the Reimbursement Obligation to the Developer. The Parties acknowledge and agree that, if approved, payment for such revenue Bonds is limited to the amount of Pledged Revenues deposited in the Special Account in accordance with this Agreement.

**Section 14. Books and Accounts.** FURA will keep, or cause to be kept, proper and current books and accounts in which complete and accurate entries shall be made of the amount of Tax Increment Revenues and Pledged Revenues received by FURA and the amounts deposited into and paid out from the Special Account.

**Section 15. Inspection.** All books, records, and reports (except those required by applicable law to be kept confidential) in the possession of FURA relating to the Tax Increment Revenues and Pledged Revenues, and allocation of such revenue to the Special Account, including the books and records described in Section 14, shall at all reasonable times be open to inspection by accountants or other agents of the Developer as provided by law.

**Section 16.** **Transfer or Assignment**. Prior to Completion of Construction, this Agreement shall not be assigned or transferred by the Developer without the prior written consent of FURA, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, notwithstanding the foregoing, the Developer, without such prior consent of FURA, may transfer all or any portion of its rights and obligations under this Agreement to an affiliate entity that is controlled by, controlling, or under common control with the Developer to develop, construct, and/or operate the Project, by giving notice of such transfer to FURA. In the event of an assignment or transfer, this Agreement will be binding on successors and assignees. Notwithstanding the foregoing, because the right to receive Pledged Revenues is a personal contract right belonging to the Developer and does not "run with the land," the following assignments and transfers shall not require any consent by FURA. In the event of a permitted assignment or transfer, the Developer shall notify FURA of the assignment, and FURA shall adjust its payments accordingly; however, in no event shall FURA be required to make duplicate payments of Pledged Revenues.

A. The Developer may lease, sell, lien or otherwise transfer its interest in the Property (including but not limited to individual units) to third parties, in the ordinary course of the Developer's business, and such lease, sale, lien, or transfer shall not be deemed to automatically assign or transfer any of the Developer's rights to the Pledged Revenues, which rights shall be retained by the Developer.

B. Notwithstanding the above, the Developer may pledge, collaterally assign or otherwise encumber all or any part of its rights arising under this Agreement, including the rights to the Pledged Revenues, to a lender or as may be provided in Bond Documents.

**Section 17.** **Obligations of FURA Limited by the Intergovernmental Agreements For Sharing of Tax Increment Financing Revenue**. Available Tax Increment Revenues and Pledged Revenues do not include the tax increment finance revenue shared by FURA with the various taxing entities as defined in the various Intergovernmental Agreements for Sharing of Tax Increment Financing Revenue related to the Plan, but the Parties agree that the revenues defined herein as Available Tax Increment Revenues are included in the definition of Pledged Revenues for all purposes in this Agreement.

**Section 18.** **FURA Sign(s) on the Property**. The Developer agrees to permit FURA to erect a sign on the Property at FURA's expense, recognizing FURA's involvement in the Property and contribution to the redevelopment and renovation of the Property. Such sign shall be posted on the Property from the start of construction until the Completion of Construction. The location, message, lettering, configuration, materials, design and other criteria shall be subject to approval by FURA and the Developer.

**Section 19.** **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if delivered by email, upon acknowledged receipt; in person; by prepaid overnight express mail or reputable overnight courier service; or 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 page below, or at such other address as has been previously or subsequently furnished in writing, to the other Party.

**Section 20.** **Exhibits.** All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.

**Section 21.** **Delays.** 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 "acts of God", fires, floods, strikes, labor disputes, accidents, pandemics, regulations or order of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party.

**Section 22.** **Default.** Time is of the essence, subject to Section 21 above. If any payment or any other material condition, obligation, or duty is not timely made, tendered, or performed by any Party, then, subject to notice and the opportunity to cure as set forth below, any non-defaulting Party may seek any remedy available at law or in equity, including damages, court costs, and attorney fees and costs as may be proper; provided, however, any such default shall not affect the obligation of FURA to collect and pay the Pledged Revenues after the Developer has achieved Completion of Construction or otherwise in connection with Bond Documents. FURA's sole remedy shall be to terminate this Agreement; but nothing shall permit FURA to terminate this Agreement in a manner that adversely affects the rights of third parties to receive all or any part of the Pledged Revenues in connection with Bond Documents or a collateral assignment authorized by this Agreement upon Completion of Construction and submittal of the requisite requests for payment of the Reimbursement Obligation.

**Section 23.** **Notice of Default and Cure Period.** In the event of an alleged default by a Party, prior to the non-defaulting Party's ability to move forward with remedies pursuant to Section 22 above, the non-defaulting Party must deliver written notice to the defaulting Party of such default, and the defaulting Party shall have thirty (30) days after receipt of the notice to cure such default, or commence to cure if such default cannot be cured within such period.

**Section 24.** **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.

**Section 25.** **Additional Documents or Action.** The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

**Section 26.** **Amendment.** This Agreement may be amended only by an instrument in writing signed by the Parties.

**Section 27.** **<u>Waiver of Breach</u>**. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and shall not operate or be construed as a waiver of any subsequent breach by any Party.

**Section 28.** **<u>Governing Law</u>.** This Agreement shall be governed by the laws of the State of Colorado and venue for any litigation shall be the Weld County, Colorado.

**Section 29.** **<u>Binding Effect</u>**. This Agreement shall 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 shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

**Section 30.** **<u>Execution in Counterparts</u>**. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

**Section 31.** **<u>No Third-Party Beneficiaries</u>**. Except for transferees, lenders, and bond holders under <u>Section 16</u>, this Agreement is intended to describe the rights and responsibilities only as to the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto.

**Section 32.** **<u>No Presumption</u>.** The Parties to this Agreement 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 shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

**Section 33.** **<u>Severability</u>**. If any provision of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall 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 the Agreement as a whole.

**Section 34.** **<u>Minor Changes</u>**. The Parties executing this Agreement are authorized to make non-substantive corrections (as determined in the sole discretion of the Executive Director of FURA and Town Manager of the Town) to this Agreement and attached exhibits, if any, as the Parties mutually consider necessary.

**Section 35.** **<u>Days</u>**. 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 shall be extended until the next day on which such banks and state offices are open for the transaction of business.

**Section 36.** **<u>Good Faith of Parties</u>**. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, 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.

**Section 37.** **<u>Parties not Partners</u>**. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint venturers, and no Party shall be responsible for any debt or liability of any other Party.

**Section 38.** **<u>Nonliability of FURA Officials and Employees</u>.** No board member, official, employee, agent or consultant of FURA shall be personally liable to the Developer in the event of a breach of this Agreement or any indenture for any amount that may become due to the Developer under the terms of this Agreement or any indenture. No member, manager, agent or employee of the Developer shall be personally liable in the event of a breach of this Agreement.

**Section 39.** **<u>Right to Return</u>.** FURA understands that the Developer retains the right to return to FURA with an application for tax increment financing or grants on additional projects and parcels.

**Section 40.** **<u>Termination</u>**. If the Developer fails to acquire the Property on or before one year after the Effective Date of this Agreement shall automatically terminate.

[Signatures on Following Pages]

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto in their respective names as of ____________________, 2022.

FIRESTONE URBAN RENEWAL AUTHORITY

____________________________________

Donald D. Conyac, Jr., Chairperson

ATTEST:

______________________________

Jessica Koenig, Recording Secretary

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Developer:

**TSG DEL CAMINO JUNCTION, LLC**,
a Missouri limited liability company

By: ___________________________________
Name: Michael H. Staenberg
Its: Manager

Address for Notices:
Attn. Michael H. Staenberg
2127 Innerbelt Business Center Dr., #200
St. Louis, MO 63114

[END OF SIGNATURES]

**EXHIBIT A**

**DEPICTION OF DEL CAMINO JUNCTION PROPERTIES AND FIRESTONE CITY CENTRE PROPERTIES**

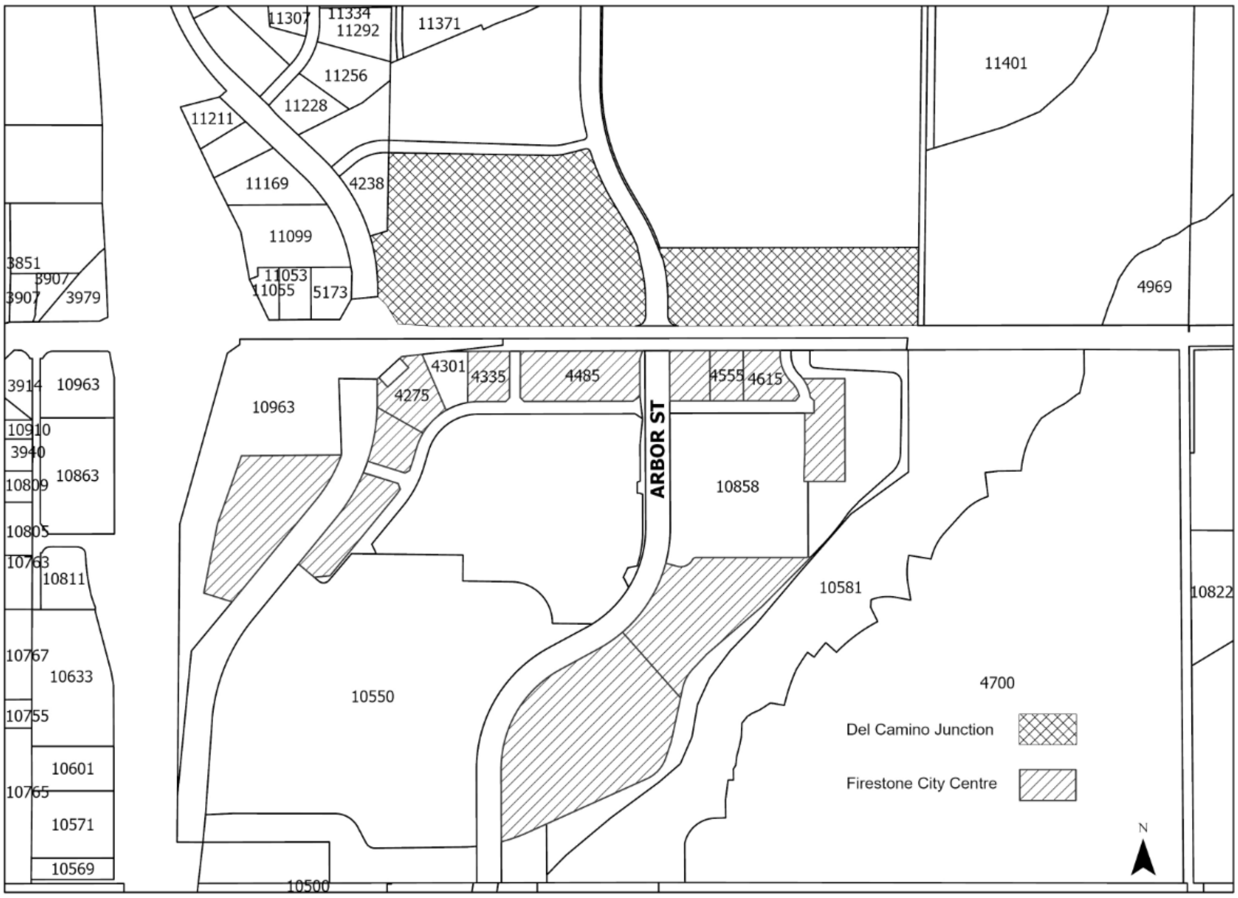


Exhibit A-1

**EXHIBIT B**

**DESCRIPTION/DEPICTION OF DEVELOPMENT OF THE PROPERTY**

<u>THE PROJECT</u>

Del Camino Junction is a proposed 33 Acre retail shopping center at the northeast corner of Firestone Blvd and East I-25 Frontage Road, in Firestone, CO.

The development is anticipated to include up to 12 outparcels fronting Firestone Blvd, occupied by retailers, restaurants, and service users, as well as a 12-acre parcel south of Union Street, west of Arbor, anticipated to be operated by a large commercial “anchor(s)” and retail/restaurant uses comprising +/- 125,000sf.

Concept:




23420393.8

**EXHIBIT C**

## URA ELIGIBLE COSTS

| OFF SITE DEVELOPMENT COST | BUDGET |
|---|---|
| Stormwater Development Cost - Burnco Property | $ 600,000 |
| Highway Improvements at East Frontage Road | $ 300,000 |
| Highway Improvements | $ 300,000 |
| Improvements at County Road 9 3/4 - TBD | $ - |
| | |
| Subtotal | $ 900,000 |

| ON SITE DEVELOPMENT COST | |
|---|---|
| Materials Import to raise site (~300,000CY) | $ 1,830,000 |
| Site Work, Compaction, Demo, Clear and Grub | $ 1,040,458 |
| Grading Erosion and Sediment Control | $ 203,585 |
| Wet Utilities (Sanitary, Storm Sewer, Domestic Water) | $ 1,197,843 |
| Site Electrical Development | $ 79,500 |
| Asphalt and roadways | $ 857,326 |
| Striping and Signage | $ 51,655 |
| Site Concrete, Curb and Gutter, Sidewalks | $ 400,560 |
| Landscaping | $ 100,000 |
| Detention Pond and Water Quality | $ 200,000 |
| Street Lights | $ 165,000 |
| Telephone Development | $ 10,000 |
| | |
| Subtotal | $ 6,135,927 |

| SOFT COST | |
|---|---|
| Construction Staking | $ 40,000 |
| Engineering | $ 150,000 |
| Traffic Engineer | $ 40,000 |
| Legal Fees (Public Finance) | $ 50,000 |
| Environmental | $ 15,000 |
| Soil Borings | $ 25,000 |
| Soils - Compaction Testing | $ 50,000 |
| Soils - Construction Observations | $ 50,000 |
| Survey | $ 75,000 |
| Floodplain (CLOMR/LOMR) | $ 150,000 |
| Interest | $ 500,000 |
| | |
| Subtotal | $ 1,145,000 |
| | |
| Total | $ 8,180,927 |

**Costs for each eligible item above may include associated soft costs, such as engineering and architecture, Developer's review time or fees, attorney fees, financing costs and respective interest thereon.

**EXHIBIT D**
Annual Calculation of Pledged Revenues

Unless otherwise indicated, all capitalized terms have the same meaning as in Section 2 of this Agreement and all references to Sections mean the sections contained in the Agreement.

1. Deposits into the Special Fund. FURA will make deposits of Tax Increment Revenues into the Special Fund in accordance with Section 10.

2. Payments from the Special Fund. From the gross Tax Increment Revenues, if any, deposited in the Special Fund each year for the Duration, FURA shall make any required payments to the County and deposit $250,000.00 in a tax abatement reserve fund for return of any overpayments in the Plan Area required by Sections 31-25-107(9)(a)(III) and (b) of the Act to be reserved until the expiration of the Term of this Agreement. FURA may retain any amounts not included in Available Tax Increment Revenues for any legal purpose.

3. Deposits into and Payments from the Special Account. After and subject to the deposits and payments described in Paragraph 2, above, each year for the Duration, FURA shall calculate and then deposit into the Special Account the Available Tax Increment Revenues as follows:

(a) For the Property, if the Developer has achieved Completion of Construction per Section 8.B. of the Agreement, calculate the amount of revenue, if any, included in the definition of Available Tax Increment Revenues produced from the Property each year as follows:

(i) Multiply the then current mill levy of each public body that levies property taxes in the Plan Area against any increase in assessed value for the Property above the Property Base Value, which results in the Tax Increment Revenues produced from the Property that year; and then

(ii) subtract the total amount of Available Tax Revenues produced by the levy of each of those taxing bodies included in the definition of Available Tax Increment Revenue and deposit any such Available Tax Increment Revenues in the Special Account (Assessed Value – Property Base Value)*(95%*(Town Mills .006805+County Mills .007519+SVVSD .024995); and

(b) For the Firestone City Centre Properties, if the Developer has satisfied the one-time (not annual) trigger requirements of Section 8.C., calculate the amount of revenue, if any, included in the definition of Available Tax Increment Revenues produced from the Firestone City Centre Properties as follows:

(i) Multiply the then current mill levy of each public body that levies property taxes in the Plan Area against any increase in assessed value above the Firestone City

Centre Properties Base Value, which results in the Tax Increment Revenues produced from the Firestone City Centre Properties that year; and then

(ii) subtract the total amount of Available Tax Revenues produced by the levy of each of those taxing bodies included in the definition of Available Tax Increment Revenue and deposit such Available Tax Increment Revenues in the Special Account (Assessed Value – Firestone City Centre Properties Base Value)*(95%*(Town Mills .006805+County Mills .007519+SVVSD .0224995).

(c) Available Tax Increment Revenues constitute Pledged Revenues under the Agreement and shall be paid to or on behalf of the Developer in accordance with Section 12.

4. Changes. Any changes in the procedures set forth in this **Exhibit D** shall not impair, jeopardize, or put at risk the Pledged Revenues, and, unless FURA is not following the methodology outlined above, nothing in this Agreement shall be construed to deprive the Developer or any legal successor in interest to the Pledged Revenues from asserting its rights to contest the proper calculation and payment of Tax Increment Revenues and Pledged Revenues under this Agreement, including, but not limited to, any rights or remedies against County Officials.