**FIRST AMENDMENT TO VINEYARD REDEVELOPMENT AND**

**REIMBURSEMENT AGREEMENT**

 THIS FIRST AMENDMENT TO VINEYARD REDEVELOPMENT AND REIMBURSEMENT AGREEMENT (“Amendment”) is made effective as of \_\_\_\_\_\_\_\_, 2020 by and among the COLORADO SPRINGS URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “Authority”), the VINEYARD METROPOLITAN DISTRICT, a quasi-municipal corporation organized and existing in accordance with Title 32, Article 1, C.R.S. (the “District”), and IP VINEYARD LLC, a Delaware limited liability company (the “Developer”) (CSURA, the District and Developer are hereinafter collectively referred to as the “Parties” and collectively as the “Parties”), on the following terms and conditions.

**RECITALS**

WHEREAS, the Authority, the District and the Developer (as assignee of Vineyard LLC) are Parties to that certain Vineyard Redevelopment and Reimbursement Agreement dated as September 5, 2012 (the “Agreement”) (capitalized terms used herein and not otherwise defined will have the meanings given to such terms in the Agreement);

WHEREAS, the Agreement includes certain terms and conditions which ultimately proved unnecessary to facilitate the redevelopment of the Property, including, without limitation, the imposition of the PIF Covenant, the establishment of the PIC, the issuance of District Bonds and the issuance of Authority Bonds as specified in Section 9.0 of the Agreement;

WHEREAS, the District has not implemented a mill levy on the Property and has not generated any District Operations Revenue or District Debt Service Revenue to date;

WHEREAS, the Developer has or is in the process of documenting and certifying Eligible Costs incurred or paid to date of not less than $7,000,000;

WHEREAS, in lieu of the various financing mechanisms described in the Agreement, the Authority has agreed to enter into tax-exempt loan transaction (the “Vectra Loan”) pursuant to (i) a Loan Agreement (the “Vectra Loan Agreement”) by and between the Authority and Zions Bancorporation, N.A. dba Vectra Bank Colorado (the “Lender”), (ii) a 2020 Tax Exempt Note (the “Vectra Note”) made by the Authority payable to the order of the Lender in the maximum principal amount of $15,000,000, and (iii) a Custodial Agreement (the “Custodial Agreement,” and together with the Vectra Loan Agreement, the Vectra Note and any other documents and instruments executed and delivered in connection therewith, the “Vectra Loan Documents”) by and among the Authority, Zions Bancorporation, National Association, as custodian (the “Custodian”), and the Lender, the proceeds of which Vectra Loan will be used to reimburse the Developer for the Eligible Costs described above; and

WHEREAS, the Parties desire to amend the Agreement to delete unnecessary provisions, update Exhibit C, and provide for the current terms and conditions of financing, all on the terms and conditions set forth herein;

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

# Certain Defined Terms.

## The Agreement is hereby amended by deleting the following defined terms from Section 2.0:

“Authority Bonds”

“Declarant”

“District Bonds”

“District Public Improvements”

“Minimum Debt Service Requirement”

“PIC”

“PIC Operating Agreement”

“PIC Revenue”

“PIF”

“PIF Covenant”

“PIF Revenue”

If not otherwise specifically addressed in this Amendment, the Agreement is deemed amended to the extent necessary to give effect to the deletion of these terms where they appear and all references to the “Agreement” shall include the original Agreement as amended by this Amendment.

## The Agreement is hereby amended by adding the definitions of “Vectra Loan,” “Vectra Loan Agreement,” “Lender,” “Vectra Note,” “Custodial Agreement,” “Custodian,” and “Vectra Loan Documents,” to Section 2.0 of the Agreement, as each such term is defined in this Amendment.

## The following defined terms in Section 2.0 of the Agreement shall be amended and restated as provided below:

“Bonds” means the Vectra Loan, the obligation to reimburse Developer Advances and other financial obligations to which the TIF Revenue is pledged and which are issued or incurred and documented by the Authority for the sole and exclusive purpose of paying Eligible Costs (including Developer Advances), and any refunding or refinancing of such bonds or financial obligations.

“Reimbursement Obligation” means the Authority’s obligation to pledge and transfer TIF Revenue to the Lender for payment of the Vectra Loan, and the obligation to reimburse the Developer for Developer Advances.

# Eligible Public Improvements; Eligible Costs. The last sentence of Section 5.0 of the Agreement is hereby amended and restated to read as follows:

# “It is the intention of the Parties that there shall be no duplicate reimbursement of Eligible Costs.”

# Reimbursement of Eligible Costs. Exhibit F of the Agreement is hereby deleted and Section 6.0 of the Agreement is hereby amended and restated in its entirety to read as follows:

“6.0 REIMBURSEMENT OF ELIGIBLE COSTS. Eligible Costs incurred by the District and the Developer shall be reimbursed in accordance with the terms and conditions of this Agreement.”

# District Bonds. Section 8.0 of the Agreement, including subsections 8.1, 8.2 and 8.3, is hereby deleted in its entirety and replaced with “Intentionally Omitted.”

# Authority Financing.

## The introductory paragraph of Section 9.0 of the Agreement is hereby deleted and replaced in its entirety with the following:

“9.0 AUTHORITY FINANCING. The sole financing provided by the Authority for the redevelopment of the Property pursuant to the Urban Renewal Plan shall be the reimbursement of actual Eligible Costs from the TIF Revenue. In furtherance of the foregoing, for the purpose of financing a portion of the Eligible Costs, the Authority has agreed to enter into the Vectra Loan pursuant to the Vectra Loan Documents. In connection with the Vectra Loan, the Authority has agreed to pledge the TIF Revenue to repayment thereof pursuant to the Vectra Loan Agreement. Developer and the District hereby agree to comply with all obligations of the Developer and the District, as applicable, in the Vectra Loan Documents and otherwise reasonably cooperate with the Authority as necessary and appropriate to allow the Authority to comply with its obligations under the Vectra Loan Documents.

9.0.1 Payment Requests. The Developer (or, if applicable, the District) shall submit payment requests in accordance with the following procedure. Any payment request shall indicate the applicable portion of the Eligible Costs completed and to be reimbursed by the Authority and such other information as the Authority may from time to time reasonably require, including, but not limited to evidence satisfactory to the Authority of the proper application of past disbursements and evidence substantiating any and all of the Eligible Costs indicated in such notice. Eligible Costs shall be submitted and certified in accordance with the procedures set forth in Exhibit E, provided, however, that there shall be no requirement to submit certifications to the PIC and the Authority shall be substituted for the PIC as applicable. Prior to payment, the Authority has the right to require adequate documentation of expenditures from the Developer and/or the District to include lien releases from contractors completing the work and included on the payment request. In addition to the foregoing requirements, prior to disbursement of proceeds of the Vectra Loan, the Developer agrees to provide the documentation and certifications that satisfy the requirements of the Custodian, the Authority and the Vectra Loan Documents. The Authority agrees to promptly review and approve such payment requests that comply with the requirements of this Section 9.0.1. Upon such approval the amounts approved for payment shall be payable pursuant to the Custodial Agreement or from the Special Fund, as applicable.

9.02 Authority’s Reimbursement Obligation. The Authority’s payment obligation to the Developer under this Agreement shall be limited to the aggregate amount of TIF Revenue actually received and legally available for such purpose. In the event there is insufficient TIF Revenue to pay the Authority’s Reimbursement Obligation in any one year, those certified, approved but unpaid Eligible Costs shall accrue and payment shall be made to the Developer when and as such TIF Revenue is available to pay such unpaid Eligible Costs, including amounts that may be available pursuant to the Vectra Loan Documents after payments on the Vectra Note. The proceeds of the Vectra Loan will be made available to pay the Authority’s Reimbursement Obligation to the extent certified and released in accordance with this Agreement and the Vectra Loan Documents. Nothing in this Agreement shall be construed to require the Authority to make any payments to the Developer on a periodic and aggregate basis, in excess of such amount from the TIF Revenue described in this Agreement. The Authority’s Reimbursement Obligation hereunder shall terminate on the first to occur of (a) payment in full of the Authority’s Reimbursement Obligation or (b) the right of the Developer to receive the TIF Revenue under the Act or any revenues legally available as a payment obligation in lieu of or as replacement of such TIF Revenue. The Developer acknowledges that the generation of TIF Revenue is totally dependent upon the production and collection of TIF Revenue from the Property in accordance with the Act, and agrees that the Authority is in no way responsible for the amount of TIF Revenue actually generated; provided, however, the Authority shall be responsible for monitoring and working with the City and the El Paso County Assessor to correct mistakes in calculating TIF Revenue and payment of the Authority’s Reimbursement Obligation available each year and to comply with reasonable requirements and covenants in connection with the Vectra Loan. To the extent permitted by law, the Authority covenants and agrees to preserve and protect the TIF Revenue and the rights of the Developer and any approved successors in interest of the right to receive payment of the TIF Revenue, and to defend such rights with respect to receipt of the TIF Revenue under and against all claims and demands of third parties not authorized to receive such TIF Revenue in accordance with this Agreement and the Act as in effect on the date of this Agreement. The Authority covenants and agrees to take no action which would result in TIF Revenue required to be paid hereunder to be withheld from the Developer, the District or the Lender. Subject to the foregoing the Developer therefore agrees to assume the risk that insufficient TIF Revenue will be generated to reimburse all Eligible Costs.

9.03 Disbursement of Vectra Loan Proceeds. The Vectra Loan Documents and the documents incidental thereto have been reviewed and approved by the Developer and the District. The Authority shall requisition funds from the Custodian pursuant to the Custodial Agreement so that upon receipt of reasonable cost certification documentation for the Eligible Costs submitted by the Developer or the District from time to time as provided herein, the Custodian shall release funds to the Authority, or as directed by the Authority to pay directly or reimburse the Developer or the District for such Eligible Costs.

9.04 Opinion. At the time of the closing of the Vectra Loan, the Authority shall deliver an opinion of counsel addressed to the Lender, which opinion shall state in substance that this Agreement has been duly authorized, executed, and delivered by the Authority, constitutes a valid and binding agreement of the Authority, enforceable according to its terms, subject to any applicable bankruptcy, reorganization, insolvency, moratorium, or other law affecting the enforcement of creditors’ rights generally and subject to the application of general principles of equity and such other matters regarding the Plan as may be reasonably required by the Lender.

## Subsection 9.2 is amended and restated in its entirety to read as follows:

“9.2 Pledge of TIF Revenue. The Authority hereby irrevocably pledges the TIF Revenue to payment of the Bonds, including Developer Advances. The TIF Revenue, when and as received by the Authority, shall be subject to the lien of such pledge without any physical delivery, filing, or further act. The Authority shall transfer the amounts in the special fund as specified in the Bond Documents, provided, however that for so long as the Vectra Loan is outstanding, the obligations of the Vectra Loan and the Vectra Loan Documents shall have priority over the other obligations hereunder and the Authority shall transfer the amounts in the special fund as specified in the Vectra Loan Documents. The Authority (or the Custodian, as applicable) shall keep, maintain, and apply such funds as required to payment of the Reimbursement Obligation. The Reimbursement Obligation established by this Agreement shall be an obligation of the Authority pursuant to Section 31-25-107(9), C.R.S. Approval of the Vectra Loan by the Authority shall mean that the Authority has elected to apply the provisions of Section 11-57-208, C.R.S., to this Agreement. Thereafter, creation, perfection, enforcement and priority of the pledge of the TIF Revenue as provided herein shall be governed by Section 11-57-208, C.R.S. and this Agreement. The lien of such pledge on the TIF Revenue and the obligation to perform the contractual provisions made herein shall have priority over any of all other obligations and liabilities of the Authority with respect to the TIF Revenue.

# PIF Covenant. Section 10.0 and Subsections 10.1 through 10.4 inclusive of the Agreement are hereby deleted in its entirety and replaced with “Intentionally Omitted.”

# Design Guidelines. Subsections 12.2 and 12.3 are each hereby deleted in their entirety and replaced with “Intentionally Omitted.”

# Developer Advances; Note. Subsection 12.4 is hereby amended by ending the third sentence thereof after “balance until paid” and deleting the remainder of the paragraph beginning with “; provided, however, notwithstanding…”. Subsection 12.5 is hereby deleted and replaced with “Intentionally Omitted.”

# Recovered Costs. Section 16.0 is hereby amended and restated in its entirety to read as follows:

“16.0 RECOVERED COSTS. The Parties will make reasonable efforts to collect and transfer Recovered Costs to the Authority, or, if applicable, the Custodian, for payment on the Vectra Loan in accordance with this Agreement and the Vectra Loan Documents.

# Exhibit C. Exhibit C to the Agreement is hereby deleted and replaced with the updated Exhibit C attached hereto.

# Miscellaneous Provisions.

## Entire Agreement; Binding Effect. The Agreement, as amended by this Amendment, contains the entire understanding of the parties hereto with respect to, and supersedes all prior agreements and understandings relating to, the subject matter hereof. All the terms and provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. All Recitals at the beginning of this Amendment are incorporated herein by this reference. All references to the “Agreement” shall include all the terms and provisions of this Amendment.

## Counterparts. This Amendment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This Amendment may be transmitted by facsimile or electronic mail, and facsimile or pdf signatures shall constitute original signatures for all applicable purposes.

## No Other Modification. Except as expressly modified by this Amendment, the terms, provisions, covenants and conditions of the Agreement shall remain unchanged and are hereby ratified and confirmed as of the date hereof as being in full force and effect. Notwithstanding the foregoing, whether or not specifically amended by this Amendment, all of the terms and provisions of the Agreement are hereby amended to the extent necessary to give effect to the purpose and intent of this Amendment.

## Time of the Essence. Time is of the essence in this Amendment.

## Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

## Further Assurances. The Parties shall each cooperate with each other to take all additional actions and execute and deliver all additional documents necessary or desirable to effectuate the provisions and spirit of this Amendment.

[SIGNATURE PAGE FOLLOWS]

 IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the date first above written.

COLORADO SPRINGS URBAN RENEWAL AUTHORITY

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

 Randle W. Case II, Chair

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IP VINEYARD LLC

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

VINEYARD METROPOLITAN DISTRICT

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT C**

**ELIGIBLE PUBLIC IMPROVEMENTS**

|  |  |  |
| --- | --- | --- |
| **1** | Demolition of Blighted Structures  | $100,000 |
| **2** | Telecom Extension: Total = $8,000,000  | $8,000,000 |
| **3** | Authority Administrative Fees | $300,000 |
| **4** | Authority Consultant Fees | $75,000 |
| **5** | Public Area Landscaping | $1,500,000 |
| **6** | Public Art | $1,000,000 |
| **7** | Sanitary Outfall Trunk Line | $350,000 |
| **8** | Land Cost for Roadways  | $4,181,760 |
| **9** | Roadway/Utility Construction | $3,600,000 |
| **10** | Grey Water Pumping System | $250,000 |
| **11** | Signage | $250,000 |
| **12** | Berms & Fencing | $500,000 |
| **13** | Sidewalks & Medians  | $500,000 |
| **14** | Additional Off-Site Infrastructure  | $500,000 |
| **15** | Stormwater Temporary Discharge System | $500,000 |
| **16** | Environmental Remediation  | $31,000 |
| **17** | Project Management  | $1,330,420 |
| **18** | Soft Costs – Public Improvements | $1,432,500 |
| **19** | Electrical Power Extension | $4,000,000 |
| **20** | Endowment for Maintenance of Common Area | $1,000,000 |
| **21** | Water Loop – Western Property  | $285,000 |
| **22** | Gas Line Dead End Extension  | $25,000 |
| **23** | Initial Grading and Utilities  | $4,100,000 |
| **24** | Stormwater Project  | $1,500,000 |
| **25** | Initial Entitlement Expenses  | $385,000 |
| **26** | Project Office – Public Improvements  | $200,000 |
| **27** | Fees | $25,100 |
|  | **Total** | $35,920,780 |
|  | **Maximum Reimbursement for Eligible Public Improvements**  | $54,220,000 |

February 24, 2020

**Regardless of the overall cost of the above Eligible Public Improvements, the maximum reimbursement from the District and CSURA shall not exceed $54,220,000, plus bond requirements and accrued interest. Cost savings in any line item on the list of Eligible Public Improvements may be applied to cost overruns in any other line item.**

**In order to be eligible for reimbursement form either the District or CSURA, Eligible Costs must be certified in accordance with Exhibit E.**

**Actual TIF Revenue is dependent on future property tax assessments but is estimated that it will fund approximately 25% of the Eligible Costs based on the information that has been provided by the El Paso County Assessor’s Office.**