

Modrall Sperling draft 1/9/17

AMENDED AND RESTATED
MASTER DEVELOPMENT AGREEMENT
BY AND BETWEEN THE VILLAGE OF TAOS SKI VALLEY,
TAOS SKI VALLEY, INC., ~~THE TAOS SKI VALLEY PUBLIC IMPROVEMENT DISTRICT~~
AND THE
TAOS SKI VALLEY TAX INCREMENT DEVELOPMENT DISTRICT
(Amending and Restating
Master Development Agreement
dated as of _____, 2015)

This AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (the "Amended and Restated Agreement" or the "Agreement") amends and restates the Master Development Agreement entered into as of _____, 2015 by and among the VILLAGE OF TAOS SKI VALLEY ("Village"), TAOS SKI VALLEY, INC., a New Mexico Corporation ("TSV, Inc." as agent, for purposes of this Agreement, for TWINING DEVELOPMENT, LLC, a Delaware limited liability company ("Twining"), and Santander Holdings, LLC, a Delaware limited liability company ("Santander" and together with Twining and TSV, Inc. and their respective successors, assigns and designees, "TSVI"), and the TAOS SKI VALLEY TAX INCREMENT DEVELOPMENT DISTRICT, a tax increment development district and political subdivision of the State (the "TIDD" and, together with the Village, ~~TSVI and, upon its formation, the TAOS SKI VALLEY PUBLIC IMPROVEMENT DISTRICT, a public improvement district and political subdivision of the State (the "PID") and TSVI, the "Parties"~~) in connection with the facts and circumstances recited below.

RECITALS

A. TSVI owns approximately 395 acres of land, located wholly within the corporate boundaries of the Village, and identified, collectively, by the legal descriptions provided in Exhibit A to this Agreement (the "Land"). The Land comprises a portion of the real property included in ~~both the PID and~~ the TIDD and is subject to the provisions of (i) Village Amended and Restated Resolution No. 2015-275 (the "TIDD Formation Resolution"), a copy of which is attached as Exhibit B hereto.

B. TSVI and the Village have collaborated to identify (i) the public and private infrastructure necessary or desirable to redevelop the core area as defined by the 2012 Taos Core Village Master Plan Redevelopment, the area known as Kachina, and certain other portions of the Village to serve new, planned development of commercial, retail and residential uses within the Village, to enhance the viability and visibility of the Village and the Taos Ski Valley as a year-round destination resort, which will promote tourism and economic development from sources outside the State, and job creation and revenue enhancement at the state and local level (such necessary or desirable infrastructure referred to herein as "Project Infrastructure") and (ii) sources of financing for the Project Infrastructure. A summary of the Project Infrastructure and anticipated financing sources and uses for the Project Infrastructure is included in the Plan of Finance, which has been updated to reflect the estimated costs, sources and uses of financing for

the Project Infrastructure as of the date of this Amended and Restated Agreement (the “Updated Plan of Finance”), a copy of which is attached to this Agreement as Exhibit C.

C. Pursuant to the Formation Resolution, a special election was held on January 30, 2015 at which a majority of the votes cast approved the formation of the TIDD and authorized the issuance of Property Tax Increment Bonds in a principal amount not to exceed \$40,000,000, as confirmed by a Certificate of Canvass of the Canvassing Board (consisting of Village Clerk Ann Wooldridge and the Village Council of the Village of Taos Ski Valley) dated February 3, 2015.

D. The TIDD was formed for the purpose of financing a portion of the costs of Project Infrastructure, which is eligible for financing by the TIDD and which generally includes road and street improvements, river crossings, public pedestrian improvements, parking improvements, water, wastewater and drainage improvements, electricity, gas and telecommunication transmission and distribution infrastructure, acquisition of real property or interests therein necessary or convenient to the installation of all such improvements, and related costs including, without limitation, costs incurred in the formation of the District, planning, design, engineering, surveying, testing, environmental compliance, construction, construction contingencies, pre-completion stabilization, maintenance and inspections, construction management not to exceed 10% of the contract price, permit and inspection fees, gross receipts taxes or acquisition of such infrastructure, plus amounts to be used to fund debt service reserves, capitalized interest, credit enhancement, costs of issuance and sale, and other costs normally associated with the issuance of bonds, as permitted by the Tax Increment for Development Act, Sections 5-15-1 through 5-15-28 NMSA 1978, as amended (the “TIDD Act”).

Comment [A1]: Please note: The 10% limitation applies to TSVI's construction management fee only, not to “soft costs,” which are not limited by that 10% cap.

E. Pursuant to Section 5-15B-1 NMSA 1978, the Legislature of the State has authorized the TIDD to issue bonds not to exceed \$44,000,000 in net proceeds, as adjusted for inflation, secured by tax increment revenues authorized by the TIDD Act, including a dedication of fifty percent (50%) of the State Gross Receipts Tax Increment revenues generated within the TIDD.

F. Pursuant to Resolution No. 2015-11 adopted on February 17, 2015, the Board of Commissioners of Taos County, New Mexico (the “County”) dedicated to the TIDD thirty-five percent (35%) of the *ad valorem* property tax increment revenue attributable to the *ad valorem* property tax levied by the County on taxable parcels within the TIDD for the purpose of paying the principal of and interest on tax increment revenue bonds issued by the District, the funding of debt service reserves, if necessary, in connection with TIDD Bonds, and for such other District purposes which are authorized by law.

G. ~~The PID~~In the future, TSVI may ~~be formed~~submit an application to the Village requesting the formation of a public improvement district (the “PID”) for the purpose of financing a portion of the costs of the Project Infrastructure ~~including, without limitation, electricity, gas and telecommunications transmission and distribution infrastructure, acquisition of real property or interests therein necessary or convenient to the installation of those improvements,~~ and the provision of enhanced services in connection with the maintenance of certain Project Infrastructure. Nothing in this Agreement is intended by the Parties to waive, or ~~shall~~to be construed as a waiver by the Village, of the requirements of a formal application for

formation of the PID, a formation hearing and, if applicable, a formation election, and the parties intend that the PID, if formed, shall be subject to the requirements and limitations imposed by the Formation Resolution adopted by the Village Council.

H. A portion of the costs of the Project Infrastructure will be funded from other sources, which may include contributions from utility companies for dry utilities, including electricity, natural gas and telecommunication lines; hook-up fees charged by the Village in connection with utility services; financing provided to or by the Village for other public infrastructure, which may include, without limitation, wastewater treatment facility construction or expansion, water system improvements; and, funding provided by TSVI for privately owned infrastructure or other improvements the cost of which will not be financed by other sources.

~~I. The Village and the PID, upon its formation, are authorized to enter into this Agreement pursuant to the PID Act, which provides, in Section 5-11-2(F) and 5-11-10(A), that the owner or owners of property to be included in a public improvement district, the municipality or county in which the district is located and the public improvement district may enter into a development agreement to establish the obligations of the owner or developer, the county or municipality and the public improvement district concerning the zoning, subdivision, improvement, impact fees, financial responsibilities, and other matters relating to the development, improvement and use of real property within the district.~~

IJ. The Village and the TIDD are authorized to enter into this Agreement pursuant to the TIDD Act, which provides, in Section 5-15-12(A), that a tax increment development district shall have the power, among various other powers, to enter into contracts or expend money for any public purpose with the respect to the district; to enter into agreements with a municipality, county or other local government entity in connection with real property located within the district, to enter into an agreement with an owner concerning the advance of money by an owner for a public purpose or the granting of real property by the owner for a public purpose.

KJ. The boundaries of the TIDD are, except for the Excluded Land (as defined in Section 1 of this Agreement), coextensive with the boundaries of the Village, and are described in *Exhibit B* to the TIDD Application and **Exhibit D** hereto.

~~LK. The Parties intend that TSVI will contract for the construction of the Project Infrastructure, as more fully described in the Improvement Location Map (attached to the PID General Plan as *Exhibit B*) and as described in included in as the TIDD Plan as *Exhibit 1*.~~

ML. The Public Infrastructure Project includes the following improvements to the core Village (“Core Village Improvements”), and Kachina area (“Kachina Improvements” and, together with the Core Village Improvements, the “Village Improvements”):

1. Relocation and improvement of the Visitor Drop-Off Facilities, public plaza improvements (“Plaza Improvements”), upgrades to existing public parking areas (“Parking Improvements”), upgrades to existing recreational vehicle parking (“RV Improvements”) and river walkway and stream protection and restoration improvements (“River/Pedestrian Improvements” and, together with the Visitor Drop-Off Facilities, Plaza

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Improvements, Parking Improvements and RV Improvements, the “Public Space Improvements”);

2. Water, water storage, sanitary sewer and storm sewer improvements, including a water storage tank to be located in the Kachina area (the “Water/Wastewater Improvements”);

3. Improvements to existing roads to comply with Village regulations and to improve safety, traffic circulation, snow removal and snow storage, river crossing and intersection crossing improvements, consisting of bridge construction on Parcel D-G, Sutton Place Crossing, West Burroughs Crossing, Strawberry Hill Crossing, upgrades to Ernie Blake Road and Thunderbird Road, paving improvements to Twining Road and the main road to the Kachina area of the Village, improvements to Strawberry Hill Access Road, improvement of Highway 150 at Village entry, street lights and signage (the “Road Improvements”).

~~ON.~~ The Public Infrastructure Project includes electric, gas and fiber optic utility improvements, including trenching from the terminal point location in Arroyo Seco to locations within the Village (the “Offsite Utility Improvements”) to upgrade and improve service reliability within the Village.

~~ON.~~ Components of the Public Infrastructure Project are eligible ~~for both PID financing (“PID-Eligible Infrastructure”) and TIDD financing (“TIDD-Eligible Infrastructure”) and, together with PID-Eligible Improvements, or~~ “Eligible Infrastructure”).

~~PQ.~~ TSVI and the Village intend that all components of the Public Infrastructure Project shall be designed and constructed according to all applicable standards and requirements of the Village or other governmental entity with jurisdiction over such improvements, shall be suitable for dedication to the Village or other governmental entity with jurisdiction over such improvements upon completion, and shall, upon completion and inspection, be dedicated and conveyed to the Village or other appropriate governmental entity and otherwise be owned and operated by the Village as provided in Section 7 of this Agreement, except that certain components of Public Infrastructure shall be subject to operation and maintenance agreements between TSVI and the Village as provided in Section 7 of this Agreement. TSVI and the Village intend that this Agreement shall be an agreement or condition pertaining to the ~~PID and the TIDD~~, and that any existing agreements between the Village and TSVI or other developers and landowners regarding the provision of components of the Public Infrastructure Project proposed to be furnished to the Village shall be deemed amended to reflect the terms of this Agreement.

~~Q.—The Village and TSVI anticipate the following in connection with the PID:~~

~~1.—The PID will impose a special levy benefit assessment (the “Special Levy”) upon the taxable parcels within the PID, allocated to each parcel according to the benefit provided by the PID-Eligible Infrastructure to that parcel, or as otherwise permitted by the PID Act, which Special Levy will be billed and collected at the same time and in the same manner as *ad valorem* property taxes are billed and collected, as provided in the PID Act.~~

~~2. In connection with PID Eligible Infrastructure benefitting the Village itself, including, without limitation, electricity, gas and telecommunications transmission and distribution infrastructure, the PID and the Village will enter into an agreement pursuant to which the Village will make periodic payments of the Special Levy allocable to the Village.~~

~~3. The costs of PID Eligible Infrastructure will be directly reimbursed from Special Levy revenues or from proceeds of Special Levy bonds issued by the PID, in one or more series, as provided in the Act (the "PID Bonds"), or a combination of direct reimbursements and proceeds of PID Bonds.~~

~~4. The PID will be responsible for imposing the Special Levy as provided in the Act and the Rate and Method of Special Levy Apportionment which, upon completion, shall be attached to and incorporated with the PID Feasibility Study, and that the cost of administering the Special Levy, including any required reimbursements to the Taos County Assessor and Taos County Treasurer, is an operating cost of the PID, which may be eligible for reimbursement through the Special Levy or, to the extent permissible, the proceeds of PID Bonds. On an annual basis, Special Levy revenues in excess of the sum of budgeted administration costs, direct reimbursements and debt service payments on the PID Bonds will be used to finance PID Eligible Infrastructure Improvements and the costs associated with formation of the District.~~

~~5. Any PID Bonds which are issued shall have, as of the date of issuance of the PID Bonds, a value to lien ratio of no less than 4 to 1 and in any event, a value to lien ratio in excess of the minimum value to lien ratio set forth in the PID Act. Upon formation of the PID, this Agreement shall be amended to include the parameters for anticipated PID Bond issuance.~~

~~6. The costs of PID Eligible Infrastructure which has been completed and dedicated prior to formation of the PID, and which TSVI specifies at the time of dedication is to be reimbursed through the PID, shall remain eligible for reimbursement by the PID from Special Levy Revenues, from proceeds of PID Bonds, or a combination of both, in an amount which shall not exceed the final tabulation of costs of the dedicated PID Eligible Infrastructure. Eligibility for reimbursement shall not be affected as a result of the final cost tabulation being completed after the date of the related dedication, but the final cost tabulation must be completed prior to reimbursement.~~

RP. The Village, the TIDD and TSVI anticipate the following in connection with the TIDD:

1. A portion of the TIDD-Eligible Infrastructure will be financed by the TIDD's issuance of tax increment revenue bonds, as provided in the Act, payable from gross receipts tax increment revenue and *ad valorem* property tax revenue generated within the TIDD (together, "Tax Increment Revenue").

2. The cost of administering the TIDD, including any required reimbursements to the Taos County Treasurer, is an operating cost of the TIDD, which may be eligible for reimbursement from Tax Increment Revenue or, to the extent permissible, the proceeds of TIDD Bonds. Tax Increment Revenue amounts in excess of the debt service

payments on the TIDD Bonds will be used to finance TIDD- Eligible Infrastructure and the costs associated with formation of the TIDD, to the extent permitted by law.

3. As described in the Plan of Finance attached as *Exhibit F* to the TIDD Petition (the “TIDD Plan of Finance”), an updated version of which is attached hereto as **Exhibit C** hereto, the TIDD may issue either a Draw-down Bond in a maximum principal amount not to exceed the amount authorized in Section 5-15B-1 NMSA 1978, or short-term taxable bonds (“Short-term Bonds”) on an annual or more frequent basis. Both the TIDD Draw-down Bond and Short-term Bonds will be payable from accumulated, non-recurring Gross Receipts Tax Increment Revenue. As described in the Updated TIDD Plan of Finance, the TIDD may issue longer term tax-exempt Bonds (“Long-term Bonds”) at such times and in such aggregate principal amounts as can be supported by recurring Tax Increment Revenue; provided that the debt service coverage requirements and covenants concerning the issuance of additional bonds in the Master Indenture (as defined in Section 1 below) are satisfied.

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§Q. The Parties anticipate that TSVI will dedicate certain Eligible Infrastructure components which it will identify as being subject to further improvement following acceptance by the Village. The Parties intend that TSVI will be eligible for reimbursement of the costs associated with constructing (i) the Eligible Infrastructure components at the time of acceptance by the Village, and (ii) such further improvements (“Post-Dedication Improvements”, which shall not be commenced without prior written authorization by the Village) at the time the Post-Dedication Improvements are accepted by the Village, and that title to Post-Dedication Improvements shall vest with the Village upon, and not earlier than, acceptance thereof.

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FR. The Project Infrastructure will enable the development of, among other uses, hotel, condominium and vacation rental units subject to the Lodgers' Tax imposed by the Village pursuant to Section 3-38-15 NMSA 1978 at the rate of 5% of the gross taxable rent generated within the Village, of which sixty percent (60%) of the proceeds (the “Eligible Lodgers' Tax”) of may be used, as provided in Section 3-38-21 NMSA 1978 by the Village for, among other purposes, “establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities, attractions or transportation systems of the municipality... .” A portion of the cost of operating Project Infrastructure components which are dedicated to the Village may be paid by the Village utilizing the Eligible Lodgers' Tax, subject to any necessary approval of the Lodgers' Tax Board..

US. The construction of the Public Infrastructure Project by TSVI will serve private development in the future and, consequently, the road, water, sewer, storm water, drainage and other public infrastructure and Offsite Utility Improvements which would otherwise be required by such private development will have already been provided. On that basis, the Village and TSVI intend that that one-time tap fees, hook-up fees, development permitting fees and franchise fees, or portions thereof that would otherwise be imposed to defray the cost of public improvements and dry utility improvements which are provided by TSVI in constructing the Public Infrastructure Project will be adjusted for TSVI, but that fees relating to public safety, emergency services, government facilities and other services and facilities which are not addressed by the Project Infrastructure shall not be adjusted, all as provided in this Agreement.

THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and for other valuable consideration, the Village, TSVI, ~~and upon their respective formation dates, the PID~~ and the TIDD agree as follows:

AGREEMENT

Section 1. Definitions. The following terms shall have the meanings assigned as provided in this Section 1 unless the context clearly requires otherwise.

“Agreement” or “Amended and Restated Agreement” means this Amended and Restated Master Development Agreement, as the same may be amended from time to time.

“Bond Counsel” means an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds engaged by, as the context requires, the ~~PID, the~~ TIDD or the Village.

“Certificate of Completion and Acceptance” means a certificate signed by an authorized officer of the Village stating that the Village has reviewed, approved and accepted components of Eligible Infrastructure for dedication and conveyance by TSVI to the Village.

“Construction Documents” means engineering and construction plans, estimated construction costs, budgets and proposed construction contracts for Public Infrastructure components which are intended either to be dedicated to the Village or the cost of which is to be reimbursed to TSVI.

“Core Village Improvements” means the Visitor Drop-Off Facilities, the Plaza Improvements, the Parking Improvements, the RV Improvements, the Pedestrian Improvements, the Water/Wastewater Improvements and the Road Improvements.

“County” means Taos County, New Mexico.

“County Property Tax Increment” means ~~thirty-five percent (35%) of the~~ *ad valorem* property tax increment revenue attributable to the *ad valorem* property tax levied by the County on taxable parcels within the TIDD.

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“Development Fees” means road impact fees, public space impact fees, and water, sewer and natural gas system development fees imposed by the Village pursuant to its Planning and Zoning Ordinance during the term of this Agreement for the purpose of defraying the cost of public infrastructure required as a result of private development within the Village.

“District” means, as the context requires, the Taos Ski Valley Public Improvement District or the Taos Ski Valley Tax Increment Development District.

“Electric Utility” means the Kit Carson Electric Cooperative.

“Eligible Infrastructure” means ~~PID-Eligible Infrastructure and~~ TIDD-Eligible Infrastructure.

“Eligible Lodgers' Tax” means sixty percent (60%) of the Lodgers' Tax imposed by the Village pursuant to Section 3-38-13 through 3-38-24 NMSA 1978 which, pursuant to Section 3-38-15(D)(2) and (E) and 3-38-21(B), may be utilized for, among other purposes, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving or acquiring real property or any interest therein for tourist-related facilities, attractions or transportation systems of the Village.

“Excluded Land” means the real property within the Village Boundaries which is presently devoted to agricultural or recreational use and is not anticipated to be developed with other uses in the future, as identified in the TIDD Boundary Map attached to the TIDD Plan and as Exhibit D hereto.

“Final Acceptance Package” shall have the meaning assigned in Subsection C of Section 4 of this Master Development Agreement.

“Formation Documents” means, ~~as the context requires, the PID Formation Documents~~ or the TIDD Formation Documents.

“Franchise Fees” means fees imposed by the Village upon natural gas, electric and telecommunication (fiber optic) customers in connection with the provision of such utility services.

“Gas Utility” means New Mexico Gas Company.

“Gross Receipts Tax Increment Revenue” means Village Gross Receipts Tax Revenue and, if applicable, State Gross Receipts Tax Increment Revenue.

“Indenture” shall mean, ~~as the context requires,~~ an indenture of trust and security agreement by and between ~~the PID or~~ the TIDD, as issuer, and the corporate trust department of a financial institution, experienced in acting as trustee in connection with trust indentures under which municipal securities are issued.

“Kachina Improvements” means water, wastewater, roadway and other Eligible Infrastructure to be constructed in the Kachina area of the Village.

“Land” means the real property owned by TSVI within the Village, as more particularly described in Exhibit A to this Agreement.

“Long-term Bonds” means bonds issued by the TIDD ~~or the PID,~~ the final maturity of which is greater than one year.

“Maintenance Agreement” means an agreement between the Village and TSVI or another third party concerning the maintenance and/or operation of improvements dedicated to the Village or otherwise for public use.

“Master Indenture” means, in connection with the TIDD, a master indenture of trust and security agreement by and between the TIDD, as issuer, and the corporate trust department of a financial institution, experienced in acting as trustee in connection with trust indentures under which municipal securities are issued, which shall be approved by the New Mexico Finance Authority as provided in Section 5-15B-1 NMSA 1978 prior to the issuance of TIDD Bonds..

“Offsite Utility Improvements” means electric, gas and fiber optic utility improvements, including trenching from the terminal point location in Arroyo Seco to locations within the Village, which may include both transmission and distribution lines and improvements.

“Parking Improvements” means the relocation, upgrading and improvement of existing public motor vehicle parking areas.

“Pedestrian Improvements” means the construction and improvement of pedestrian walkways, including river walkway improvements within the Village.

~~“PID” means the Taos Ski Valley Public Improvement District.~~

~~“PID Act” means the Public Improvement District Act, Sections 5-11-1 through 5-11-27 NMSA 1978, as amended.~~

~~“PID Eligible Infrastructure” means Public Infrastructure Project components eligible for financing or reimbursement from proceeds of PID Bonds or Special Levy Revenues.~~

~~“PID Draw down Bond” means a bond issued by the PID in a maximum principal amount not to exceed the amount authorized pursuant to the PID Formation Documents, pursuant to which advances made by the purchaser of the Draw down Bond are made at the request of TSVI and are repaid in 30 days or less, with interest, by the PID from accumulated Special Levy Revenue.~~

~~“PID Formation Documents” means the Village resolution approving the formation of the PID and the documents and exhibits approved in connection therewith including, without limitation, the District General Plan, the Feasibility Study, including the Rate and Method of Apportionment of Special Levy, the Notice of Formation and Imposition of Special Levy, this Agreement, and, if applicable, the Resolution of the Village calling for a Formation Election and the Certificate of Canvass of the Election.~~

“Plaza Improvements” means the relocation, reconstruction, improvement and upgrading of the public pedestrian areas within the Village.

“Post-Dedication Improvements” means improvements to be made to Eligible Infrastructure components following the dedication and acceptance of the Eligible Infrastructure

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components, which additional improvements will also be ~~PID Eligible Infrastructure or TIDD Eligible Infrastructure~~.

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“Project Infrastructure” means the public and private infrastructure necessary or desirable to redevelop the core area and Kachina area of the Village, to serve new, planned development of commercial, retail and residential uses within the Village, to enhance the viability and visibility of the Village and the Taos Ski Valley as a year-round destination resort, which will promote tourism and economic development from sources outside the State, and job creation and revenue enhancement at the local level.

“Property Tax Increment Revenue” shall have the meaning assigned to such term in Exhibit F to this Agreement.

“Public Benefit Improvements” shall have the meaning assigned to such term in Section 9 of this Agreement.

“Public Infrastructure” means capital improvements which are (i) dedicated for public use, (ii) owned by a public entity (iii) generally available for public use, (iv) eligible for financing under the ~~PID Act or the TIDD Act~~, and (v) Related Costs.

“Public Infrastructure Project” means the public infrastructure improvements eligible for financing by ~~the PID and/or~~ the TIDD, which specifically includes the Core Village Improvements, the Offsite Utility Improvements and Related Costs.

“Reimbursable Costs” means all items of expense directly relating to the cost of the acquisition and construction of Eligible Infrastructure components and the incidental costs and expenses relating thereto including, but not limited to: engineering expenses, legal expenses, printing, posting, publication and mailing expenses, fees and expenses incurred in making surveys, studies and estimates of costs, testing expenses, construction management expenses, TSVI Warranty costs (as defined in Section 4(c)(iii) hereof), and such other costs and expenses eligible for payment from the proceeds of bonds issued by ~~the PID under the PID Act or~~ the TIDD under the TIDD Act and the Indenture related to the District issuing the bonds, and to pay all incidental expenses related to the construction and acquisition of the Eligible Infrastructure components, including Related Costs.

“Related Costs” means, without limitation, costs incurred in the formation of a District, planning, design, engineering, surveying, testing, environmental compliance, construction, construction contingencies, pre-completion stabilization, maintenance and inspections, construction management not to exceed ten percent (10%) of the contract price, permit and inspection fees, gross receipts taxes or acquisition of such infrastructure, plus amounts to be used to fund debt service reserves, capitalized interest, credit enhancement, costs of issuance and sale, and other costs normally associated with the issuance of bonds.

“Related Party” means, in connection with TSVI, Twining, Santander, and any other party wholly owned by the same entity that owns TSVI and that TSVI designates as a Related Party in writing delivered to the other Parties to this Agreement.

“Road Improvements” means improvements to existing roads, construction of new roadway improvements and acquisition of land necessary or convenient for the improvement of traffic circulation, snow removal and snow storage capacity of the Village necessary or convenient for compliance with Village ordinances and regulations and enhancement of health and safety, river crossing and intersection crossing improvements, consisting of bridge construction on Parcel D-G, Sutton Place Crossing, West Burroughs Crossing, Strawberry Hill Crossing, upgrades to Ernie Blake Road and Thunderbird Road, paving improvements to Twining Road, improvement of the Strawberry Hill Access Road, improvement of Highway 150 at Village entry, street lights and signage within the Village.

“RV Improvements” means the upgrading and improvement of existing recreational vehicle parking within the Village.

“Short-term Bonds” are obligations of the TIDD which mature in 30 days or less and are payable from accumulated, non-recurring Gross Receipts Tax Increment Revenue.

“Special Levy” shall have the meaning assigned to such term in Exhibit E to this Agreement.

“Specified Infrastructure Needs” shall have meaning assigned to such term in Section 8(A) of this Agreement.

“State” means the State of New Mexico.

“State Gross Receipts Tax Increment Dedication Documents” means the resolution or other approval by the State Board of Finance of the Village's application for dedication of State Gross Receipts Tax Increment Revenue and the legislation appropriating State Gross Receipts Tax revenue to the TIDD, as finally enacted.

“State Gross Receipts Tax Increment Revenue” means 50% of the State Gross Receipts Tax revenue, which State Gross Receipts Tax is currently imposed at the rate of 5.125% of the taxable gross receipts in the TIDD.

“Tax Increment Revenue” means the Village Gross Receipts Tax Increment revenue, the State Gross Receipts Tax Increment revenue (if applicable), and Property Tax Increment Revenue generated within the TIDD.

“Telecommunications Utility” means a provider of telecommunications utility service within the Village.

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“TIDD” means the Taos Ski Valley Tax Increment Development District.

“TIDD Act” means the Tax Increment for Development Act, Sections 5-15-1 through 5-15-28 NMSA 1978, as amended

“TIDD Bonds” means, as the context requires, TIDD Short-term Bonds, TIDD Long Term Bonds and/or TIDD Draw-down Bonds.

“TIDD Draw-down Bond” means a bond issued by the TIDD in a maximum principal amount not to exceed the amount authorized in Section 5-15B-1 NMSA 1978, pursuant to which advances made by the purchaser of the Draw-down Bond are made at the request of TSVI and are repaid in 30 days or less, with interest, by the TIDD from specified accumulated Tax Increment Revenue.

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“TIDD-Eligible Infrastructure” means Public Infrastructure Project components eligible for financing or reimbursement from proceeds of TIDD Bonds or, to the extent permitted by applicable law, Tax Increment Revenues.

“TIDD Formation Documents” means Village Amended and Restated Resolution No. 2015-275 approving the formation of the TIDD and the documents and exhibits approved in connection therewith including, without limitation, the Tax Increment Development Plan, this Agreement, the Resolution of the Village calling for a Formation Election and the Certificate of Canvass of the Election and the State Gross Receipts Tax Increment Dedication Documents.

“Utility Entities” or “Utility Entity” means, collectively or individually, the Electric Utility, the Gas Utility and the Telecommunications Utility.

“Village” means the Village of Taos Ski Valley, a New Mexico municipality.

“Village Gross Receipts Tax Increment Revenue” means 75% of the incremental revenues of the following gross receipts taxes enacted by the Village:

(a) the general purposes municipal gross receipts taxes referenced in §5-15-15(B)(1) of the TIDD Act (the “General Purposes GRT”), currently imposed at the rate of 1.50% of the taxable gross receipts in the TIDD;

(b) the municipal environmental services gross receipts tax referenced in §5-15-15(B)(2) of the TIDD Act (the “Environmental GRT”) currently imposed at the rate of 0.0625% of the taxable gross receipts in the TIDD;

(c) the municipal infrastructure gross receipts taxes referenced in §5-15-15(B)(3) of the TIDD Act (the “Municipal Infrastructure GRT”) currently imposed at the rate of 0.25% of the taxable gross receipts in the TIDD;

(d) the municipal capital outlay gross receipts taxes referenced in §5-15-15(B)(4) of the TIDD Act (the “Municipal Capital Outlay GRT”) currently imposed at the rate of 0.25% of the taxable gross receipts in the TIDD

(e) the state shared gross receipts taxes distributed to the Village pursuant to §7-1-6.4 NMSA 1978, as provided in §5-15-15(B)(6) of the Act, currently imposed at the rate of 1.225% of the taxable gross receipts in the TIDD which, together with the General Purposes

GRT, the Environmental GRT, the Municipal Infrastructure GRT and the Municipal Capital Outlay GRT, is equal to an aggregate 3.2875% of the taxable gross receipts in the TIDD.

“Village Improvements” means the Core Village Improvements and the Kachina Improvements.

“Village Reserve Funds” shall have the meaning assigned to such term in Section 11 hereof.

“Visitor Drop-Off Facilities” means the improved area to serve as a drop-off or pick-up station for visitors utilizing shuttle service from parking areas within the Village or locations outside the Village, which area is currently located at the entrance to the Taos Ski Valley resort.

“Water/Wastewater Improvements” means the construction, rehabilitation, upgrading and improvement of water, water storage, water and/or wastewater treatment, sanitary sewer and storm sewer improvements within the Village (certain of which may be located in the Kachina area of the Village, notwithstanding that the Water/Wastewater Improvements are generally defined as being included with the Core Village Improvements), which may include certain offsite improvements located outside the TIDD.

Section 2. Effective Date of Agreement; Conditions Precedent to this Agreement.

A. Effective Date. This Agreement is effective as to the Village, TSVI and the TIDD, as of February 3, 2015 and as to the Village, TSVI, ~~the TIDD and the PID, upon formation of the PID pursuant to the PID Act and the TIDD.~~

~~B. PID to become a Party. Upon formation of the PID, it shall automatically be deemed to be a party under this Agreement, and shall be bound by the obligations set forth herein, and the PID shall execute and deliver this Agreement, and this Agreement, as further executed, shall be recorded pursuant to Section 11 hereof. This Agreement shall remain effective as to the other Parties irrespective of whether the PID is formed or not.~~

~~C. No Net Cost to Village.~~

~~B. No Net Cost to Village. Except as otherwise expressly provided in this Agreement, all costs and expenses incurred by the Village pursuant to this Agreement in connection with the application, formation and operation of the Districts shall be paid by TSVI through advance payments; provided that TSVI shall be reimbursed for all or a portion of expenses as they relate to the ~~PID from the proceeds of PID Bonds or special levy revenue accumulations, and as such expenses relate to the~~ TIDD from proceeds of TIDD Bonds or accumulated Tax Increment Revenue, in each case to the extent allowable by applicable state and federal law.~~

Section 3. Boundaries of PID. ~~The PID shall include the real property described in Tab 4 to the PID Application. The boundaries of the PID may be amended as follows:~~

~~_____ A. _____ Consent by All Owners. If, at the time amendment is requested, the record owners of the land within the PID affected by the proposed amendment, or proposed to be included in the PID, have provided written consent to the boundary amendment and either (i) no bonds of the PID are then outstanding or (ii) in the determination of the trustee for the bonds as provided in the related Indenture or Indentures, holders of bonds of the PID which are then outstanding will not be adversely affected, the amendment shall be approved by the Board of Directors of the PID and the Village Administrator, which approval authority is hereby delegated by the Village Council.~~

~~_____ B. _____ Consent by Less than All Owners. If, at the time amendment is requested, the record owners of less than 100% of the land within the PID affected by the proposed amendment have provided written consent to the boundary amendment, the proposed amendment shall be subject to the provisions of Section 5-11-13 NMSA 1978.~~

~~Section 4. _____ Boundaries of TIDD. The boundaries of the TIDD shall be co-extensive with the Village boundaries, other than the Excluded Land, as the Village Boundaries may be amended by annexation or other lawful means.~~

Section ~~54~~. Village Acquisition of Eligible Infrastructure Completed by TSVI. For purposes of this Section ~~54~~, reference to TSVI shall include any Related Party designated in writing by TSVI to the other Parties to this Agreement.

A. Village Review of Construction Documents. As provided in this Section ~~54~~, the Village shall have the right to review Construction Documents for any component of Eligible Infrastructure (other than Offsite Utility Improvements located outside the boundaries of the Village) prior to commencement of construction work on such component for the purpose of determining that each component will be constructed in conformity with all applicable Village regulations and building codes, and that the cost of the component is consistent with the estimated costs set for in the Updated Plan of Finance attached hereto as **Exhibit C**; provided, that the Parties hereby acknowledge that the estimated costs in the Plan of Finance are preliminary estimates and are subject to adjustment based upon reasonable evidence that such adjustment is justified. The Village shall have the right to comment on and request reasonable adjustments to Construction Documents submitted for its review by TSVI; provided, that nothing in this Agreement is intended to modify the Village's regulations to construction permitting, as either a waiver expansion of the Village's permitting authority.

B. Inspection and Dedication; Trigger of Reimbursement Obligation.

(i) TSVI shall notify the Village that it has completed the construction of individual components of Eligible Infrastructure and shall arrange for inspection by the Village.

(ii) Following inspection by the Village, TSVI (or the contractor performing the construction) shall prepare a Final Acceptance Package for review by the Village.

(iii) Upon receipt of a Final Acceptance Package, the Village shall promptly determine whether the components of Eligible Infrastructure have been constructed in accordance with the Construction Documents and, upon determining that such components have been constructed in compliance therewith, shall promptly accept all components which have been constructed in accordance therewith, as evidenced by a Certificate of Completion and Acceptance delivered by the Village to TSVI as provided in subsection C of this Section ~~54~~.

(iv) Upon delivery by the Village of a Certificate of Completion and Acceptance to TSVI as provided in subsection C of this Section ~~54~~, the ~~Districts~~TIDD shall be obligated to reimburse TSVI or its designee for the Reimbursable Costs (as defined in Section 1 of this Agreement) of such component, which obligation shall be contingent upon the issuance of bonds by the ~~PID or the TIDD, or each of them~~, or the availability of funds from other sources, sufficient to reimburse TSVI for such actual costs. The reimbursement obligations of the ~~PID and TIDD~~ provided in this Section ~~54~~ are subject to the conditions and limitations set forth in ~~Sections 6 and 7~~Section 5 of this Agreement, ~~respectively~~.

C. Acceptance by Village. TSVI shall submit to the Village, on behalf of the District, one or more Final Acceptance Packages. The Village shall review the Final Acceptance Package pertaining to the components of Eligible Infrastructure for completeness and accuracy. Such review shall be completed in a timely fashion and, in any event within 30 days of receipt of the Final Acceptance Package, and the approval and acceptance of the Final Acceptance Package shall not be unreasonably withheld, conditioned or delayed; provided, that the Village may request additional information and/or documentation (“Additional Documentation”) in connection with a Final Acceptance Package during the 30-day period, and that period shall be extended by the number of days from the date on which Additional Documentation is requested to and including the date on which such and the date on which the Additional Documentation is delivered to the Village. Upon approval of the Final Acceptance Package, the Village shall issue a Certificate of Completion and Acceptance for all accepted components of Eligible Infrastructure, which shall then be dedicated and conveyed by TSVI to the Village. A Final Acceptance Package shall include the following:

(i) A certification and representation by TSVI or the contractor constructing the components of Eligible Infrastructure that:

(a) The Eligible Infrastructure components have been constructed in substantial compliance with plans and specifications approved by the Village in a good and workmanlike manner by well-trained adequately supervised workers, and in strict compliance with all governmental and quasi-governmental regulations, laws, and building codes; and

(b) The Eligible Infrastructure components have been inspected and approved for dedication to the Village.

(ii) The costs of constructing the Eligible Infrastructure components actually have been incurred by TSVI, which costs shall be documented in a manner reasonably acceptable to the Village and the ~~PID and/or TIDD, as applicable~~.

(iii) A one-year warranty from the contractor that constructed the components of Eligible Infrastructure for the benefit of the Village, ~~[[which warranty period shall commence on the date that the Eligible Infrastructure is accepted by the Village]]~~, will be provided to TSVI, and then be assigned from TSVI to the Village at the time that ownership of the Eligible Infrastructure is transferred to the Village. If the remaining duration of the contractor's warranty assigned by TSVI to the Village is less than one year at the time of assignment, TSVI shall warranty the dedicated Eligible Infrastructure as to any costs which are covered by the warranty which are incurred after the expiration of the warranty period, for the remainder of the one-year period beginning on the date of transfer of ownership of the warranted Eligible Infrastructure by TSVI to the Village ("TSVI Warranty").

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(iv) Such other inspection reports, plans, specifications or other information related to the components of Eligible Infrastructure as the Village may reasonably request.

(v) A description or identification of any additional improvements to be made in the future to the Eligible Infrastructure components, which additional improvements will be Eligible Infrastructure ("Post-Dedication Improvements"). Reimbursement of the costs of Post-Dedication Improvements is addressed in Subsection F of this Section ~~§4~~.

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D. General Provisions Concerning Dedication and Operation. The following general provisions shall govern the dedication and operation of Eligible Infrastructure components, except as otherwise provided in Section ~~86~~ hereof:

(i) TSVI shall convey to the Village all real and personal property which the Village deems reasonably necessary to accept the Eligible Infrastructure component, free and clear of all liens, claims and encumbrances (except those non-monetary liens and encumbrances that are required by the Village or other public agency or that would not materially interfere with the intended use of the property as reasonably determined by Village) as a condition of acceptance by the Village. Dedication shall be by deed, easement, bill of sale or other appropriate instrument of conveyance.

(ii) Upon the issuance by the Village of a Certificate of Completion and Acceptance, the Village shall accept, own, operate and maintain the Eligible Infrastructure components. Neither District will fund any operations and maintenance prior to or after the dedication of Eligible Infrastructure components. Pre-dedication operation and maintenance costs, if any, will be funded by TSVI. The operation and maintenance of Eligible Infrastructure components from and after conveyance to the Village will be performed and paid for by the Village, its assignee or agent, as applicable.

(iii) TSVI shall convey its right, title and interest in components of Offsite Utility Infrastructure to the Village for transfer or assignment thereafter (whether immediately or at other appropriate time, as determined by TSVI in consultation with the Village) to the applicable Utility Entity in accordance with that entity's requirements for

acceptance of those components and subject to franchise agreements which may be in effect at the time of conveyance.

E. Reimbursement Obligation Accrues Upon Acceptance. The Parties acknowledge and agree that TSVI may transfer completed Eligible Infrastructure components to the Village, including Offsite Utility Infrastructure for subsequent transfer to the applicable the Utility Entities, prior to the issuance of ~~District Bonds~~TIDD Bonds. If a PID is formed in the future and becomes a party to this Agreement, the provisions of this Subsection E and subparagraphs hereunder shall also be applicable in connection with financing provided by the PID.

(i) Upon acceptance by the Village (evidenced by a Certificate of Completion and Acceptance) or by a Utility Entity of Eligible Infrastructure components, the ~~Districts~~TIDD shall, ~~together,~~ be obligated to reimburse TSVI for the Reimbursable Costs thereof contingent upon issuance by each of the Districts of Bonds as provided in this Agreement, and any such conveyance shall not be construed as a dedication or gift of the Eligible Infrastructure components or a waiver of the payment of Reimbursable Costs of the dedicated and accepted components of Eligible Infrastructure.

(ii) Under no circumstances will the ~~Districts together~~TIDD pay TSVI any amount in excess of the Reimbursable Costs. ~~Each District~~The TIDD shall be obligated to reimburse TSVI for Reimbursable Costs to the extent that:

(a) ~~that District~~the TIDD is able to issue bonds within the parameters set forth ~~in the Formation Documents applicable to that District~~herein, or has otherwise accumulated revenues which are legally available for payment of Reimbursable Costs; and

(b) the portion of Reimbursable Costs to be reimbursed by the ~~District~~TIDD has not previously been paid to TSVI and is not anticipated to be paid from any other financing source.

(iii) In connection with costs of PID Eligible Infrastructure which TSVI dedicates prior to the formation of the PID, TSVI may, at the time of dedication, designate in writing that the costs of such Infrastructure shall be reimbursed by the PID, following its formation. The costs of PID-Eligible Infrastructure which are so-designated by TSVI shall then be eligible for reimbursement ~~from Special Levy Revenues, from proceeds of PID Bonds, or a combination of both,~~by the PID, in an amount which shall not exceed the final tabulation of costs of the dedicated PID Eligible Infrastructure. Eligibility for reimbursement shall not be affected as a result of the final cost tabulation being completed after the date of the related dedication, but the final cost tabulation shall be completed as a condition precedent to reimbursement of such costs.

(iv) Nothing in this Agreement shall be construed as a waiver by the Village, of the requirements of a formal application for formation of the PID, a formation hearing and, if applicable, a formation election. The PID, if formed, shall be subject to the

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requirements and limitations imposed by the Formation Resolution adopted by the Village Council.

F. Post-Dedication Improvements. TSVI may elect to dedicate certain Eligible Infrastructure components which TSVI will identify as being subject to construction of Post-Dedication Improvements. The Village hereby grants a right of entry to TSVI and its agents to construct Post-Dedication Improvements which are identified in writing to the Village at the time that the corresponding Eligible Infrastructure components are initially dedicated; provided, that TSVI shall obtain prior written authorization to proceed with construction of Post-Dedication Improvements prior to commencement of construction. TSVI shall be eligible for reimbursement of the costs associated with constructing (i) the Eligible Infrastructure components at the time of acceptance by the Village, and (ii) Post-Dedication Improvements at the time of acceptance thereof by the Village. The Parties hereby agree that title to Post-Dedication Improvements shall vest with the Village upon, and not earlier than, acceptance thereof, and that the Village's ownership of the dedicated infrastructure to be further improved with Post-Dedication Improvements shall not have the effect of vesting the title to the Post-Dedication improvements prior to the Village's acceptance of the same.

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G. Reimbursement Capacity Limitations. The Parties agree that TSVI shall be reimbursed to the full extent practicable by the Districts, within the agreed-upon maximum financing authorization applicable to, ~~respectively,~~ the TIDD ~~and the PID~~. The Parties further acknowledge that market conditions and other external events and conditions may make it infeasible for the one or both of the Districts to provide reimbursement financing at the maximum amount authorized for each of the Districts and that, in such event, the applicable District or Districts shall not be obligated to issue bonds, incur indebtedness or otherwise reimburse TSVI for amounts which cannot feasibly be financed by the ~~applicable District or Districts~~ TIDD.

(i) The governing bodies of the TIDD, ~~the PID~~ and TSVI shall collaborate to determine the timing of issuance of bonds by the ~~Districts, or either of them~~ TIDD, and the other terms and features of the bonds as provided in the ~~respective~~ TIDD Plan of Finance ~~for each District~~, and as provided in ~~subparagraphs~~ subparagraph (ii) ~~and (iii)~~ below.

(ii) At the election of TSVI, the TIDD shall issue (aa) issue Short-term Bonds at the request of TSVI at such times that at least \$250,000 in GRT Increment Revenue has accumulated, for a maximum of 4 requests in a 12-month period; or (bb) a Draw-down Bond; or (cc) Long-term Bonds provided that the TIDD is advised by an independent financial advisor or underwriter engaged by the TIDD that such bonds can be marketed or privately placed in a reasonably efficient manner taking into account then-current market conditions, interest rates and other bond features for municipal securities of similar credit quality and aggregate principal amount. At the election of TSVI, the TIDD may issue Short-term Bonds, Long-term Bonds and Draw-down Bonds, provided that the covenants and requirements set forth in the Master Indenture concerning debt service coverage requirements and issuance of additional bonds are satisfied.

~~_____ (iii) Subject to such additional requirements or limitations that may be imposed pursuant to the Formation Resolution for the PID, the PID may reimburse TSVI for costs of Eligible Infrastructure at the request of TSVI at such times that at least \$100,000 in Special Levy Revenue has accumulated, for a maximum of 4 requests in a 12-month period. The PID shall issue longer-term Special Levy Revenue Bonds at the request of TSVI, provided that the PID is advised by an independent financial advisor or underwriter engaged by the PID that such bonds can be marketed or privately placed in a reasonably efficient manner taking into account then-current market conditions, interest rates and other bond features for municipal securities of similar credit quality and aggregate principal amount.~~

H. Application of Bond Proceeds.

~~_____ (i) PID Bonds shall be issued pursuant to the PID Indenture, which shall be entered into by and between the PID and a banking institution acting as trustee acceptable to the PID Board and TSVI (the "PID Trustee"). TIDD Bonds shall be issued pursuant to the Master Indenture (for purposes of this Section 5(G4(H)), the "TIDD Indenture"), which shall be entered into by and between the TIDD and a banking institution acting as trustee acceptable to the TIDD Board and TSVI (the "Master Trustee" or the "TIDD Trustee").~~

~~_____ (a) The PID Indenture shall provide for the deposit to the credit of a project fund or reimbursement fund (the "PID Project Fund" as shall be defined in the PID Indenture), the proceeds of the PID Bonds net of deposits for the payment of interest, if applicable, costs of issuance, a debt service reserve account and such other funds and accounts as may be more specifically described in the Indenture.~~

~~_____ (b) (i) The TIDD Indenture shall provide for the deposit to the credit of a project fund or reimbursement fund (the "TIDD Project Fund" as shall be defined in the TIDD Indenture), the proceeds of the TIDD Bonds net of deposits for the payment of interest, if applicable, costs of issuance, a debt service reserve account and such other funds and accounts as may be more specifically described in the TIDD Indenture. Moneys in the TIDD Project Fund and shall be disbursed by the Trustee to reimburse TSVI for Reimbursable Costs.~~

~~Moneys in each of the PID Indenture Project Fund and TIDD Project Fund and shall be disbursed by the applicable Trustee to reimburse TSVI for Reimbursable Costs.~~

~~(ii) (iii) Requests for disbursement from the PID Project Fund or the TIDD Project Fund, as applicable, shall be made substantially as follows: In each case, TSVI shall present to the Trustee a disbursement request (the "Disbursement Request"), the form of which shall be provided in the related TIDD Indenture, executed by a duly authorized representative of TSVI and an authorized officer of the District (TIDD, as shall be defined and provided in the related TIDD Indenture); certifying that a component or components of Eligible Infrastructure have been dedicated to the Village, identifying in reasonable detail the work to which the payment relates.~~

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(iii) Authorized representatives of the ~~PID or TIDD, as applicable~~, shall have the right, upon two (2) business days prior written notice to TSVI and during normal business hours, to review all books and records of TSVI pertaining to Reimbursable Costs.

I. Construction Services. TSVI shall contract for all engineering, design and construction services necessary to complete Eligible Infrastructure. All contractors and subcontractors shall agree to comply with the requirements of the Village's applicable development policies and permitting requirements.

J. Projected Costs and Timing of Construction. The estimated cost (including planning, design, engineering, construction, testing, surveying, construction management, inspection, fees, gross receipts taxes, capitalized interest and contingencies) of constructing and financing the Eligible Infrastructure, as identified in the TIDD Plan ~~(and as shall be identified in the District General Plan for the PID), is \$58,150, is \$62,608,000,~~ which includes approximately \$44,000,000 in Reimbursable Costs anticipated to be reimbursed through TIDD financing ~~and is anticipated expected to include approximately \$6,000,000 in Reimbursable Costs associated with Eligible Infrastructure anticipated to be reimbursed through PID.~~ The construction of Eligible Infrastructure will be completed prior to the issuance of bonds by the ~~Districts~~TIDD, other than short-term tax increment revenue bonds issued by the TIDD.

K. Indemnification. To the extent not prohibited by applicable law, TSVI's indemnity obligations shall not extend to claims, actions, suits or other proceedings arising from the negligence, acts or omissions of the Village, the ~~Districts~~TIDD, or their respective agents, officers or employees.

(i) Indemnification Regarding Eligible Infrastructure. Until Eligible Infrastructure components are accepted by the Village, TSVI shall be solely responsible for maintaining the premises upon which the Eligible Infrastructure components are being constructed in a safe condition. TSVI shall defend, indemnify and hold harmless the Village and its officials, agents and employees from those claims, actions suits or other proceedings arising from or out of the negligent acts or omissions of TSVI, its agents, representatives, contractors or subcontractors or arising from the failure of TSVI, its agents, representatives, contractors or subcontractors to perform any act or duty required of TSVI herein. The indemnifications required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage, and TSVI shall (a) obtain 1-year construction warranties in connection with Eligible Infrastructure components prior to or at the time that construction thereof commences, which warranty period shall commence at the time that the Village accepts dedication of the related Eligible Infrastructure, and (b) cause the Village and each of the Districts to be included as an additional insured or beneficiary of such warranties. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

(ii) Indemnification Regarding Petition. TSVI shall indemnify the Village, the ~~Districts~~TIDD and their respective agents and employees and shall hold the Village and, the ~~Districts~~TIDD and their respective agents, officers and employees harmless from and against any and all liabilities, claims, costs and expenses including reasonable attorneys' fees,

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incurred in any challenge or proceeding relevant to the formation, operation, and administration of the ~~Districts~~TIDD, the offer and sale of bonds of ~~either District, the TIDD, and~~ the dedication, disbursement, pledge or expenditure of Tax Increment Revenue by the TIDD in connection with TIDD Bonds, ~~and the levying by the PID of any assessment, special levy or charge in connection with the PID and PID Bonds.~~

(iii) Indemnification Regarding Real Property. TSVI shall deliver an independent environmental report or assessment of any real property being dedicated to and accepted by, leased to or operated by the Village, and a proposed form of indemnity agreement with respect to all environmental law liability.

~~Section 6. — Financing of PID Funded Eligible Infrastructure. The PID shall issue PID Bonds substantially as provided in the PID Bond Provisions attached to this Agreement as Exhibit E. The Parties acknowledge that, following formation of the PID, this Agreement shall be deemed further amended to reflect specific features of PID financing to which the Village, TSVI and the PID Board have agreed to the extent that such features are not addressed herein.~~

~~Section 75. Financing of TIDD Funded Eligible Infrastructure.~~ The TIDD shall issue TIDD Bonds substantially as provided in the TIDD Bond Provisions attached to this Agreement as Exhibit ~~FE~~, as otherwise provided in this Agreement, or as provided in the Master Indenture, as supplemented or amended from time to time.

Section 86. Certain Eligible Infrastructure to be Operated and Maintained by TSVI.

A. Maintenance Agreement. To the extent authorized pursuant to an appropriate procurement process as determined by the Village, certain Eligible Infrastructure components, including portions of the Plaza Improvements, Pedestrian Improvements and Parking Improvements may be operated and maintained by TSVI pursuant to a Maintenance Agreement between the Village and TSVI to be entered into in connection with the dedication of such Eligible Infrastructure component(s) to the Village. Irrespective of whether a Maintenance Agreement is entered into with TSVI, any Maintenance Agreement providing for maintenance and/or operation of Eligible Infrastructure the cost of which has been reimbursed with proceeds of tax-exempt bonds shall include provisions acceptable to Bond Counsel restricting the use of that Eligible Infrastructure in a manner that complies with Internal Revenue Service Revenue Procedure 97-13 or will otherwise not adversely affect the exclusion of interest on the bonds from gross income for federal income tax purposes.

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B. Maintenance Standards applicable to Infrastructure Dedicated to the Village pursuant to this Agreement.

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The following maintenance standards shall be applicable to Public Infrastructure Improvements dedicated pursuant to the provisions of this Agreement. While the Village is responsible for maintaining infrastructure owned and controlled by the Village, nothing herein shall be herein shall be construed as prohibiting (a) the Village from hiring third parties to perform the maintenance activities and meeting the standards described in this Section, or (b) TSVI from participating in or contributing toward the maintenance of such improvements to the

extent necessary or convenient to the operation of its properties which are proximate to the improvements. To the extent reasonably practicable, TSVI shall notify the Village prior to commencing or contributing to the cost of maintenance activities that are not otherwise subject to a written agreement between those Parties, and those Parties shall collaborate to determine the amount of reimbursement, if any, due to TSVI for maintenance activities conducted by or on behalf of TSVI at its cost; provided, that nothing herein shall be construed as obligating the Village to reimburse TSVI without prior written agreement to the same.

(i) Plaza Area and Pedestrian Walkway Standards.

Plaza space and Pedestrian Walkways will be open to the public 365 days a year. Except as otherwise noted, the following maintenance activities shall be conducted and standards applied on a daily basis.

aa. Monitor the Plaza areas daily and maintain in clean and safe condition, responding to weather conditions as appropriate.

bb. Utilize the snowmelt system in the areas served by that system.

cc. Promptly remove snow and ice in areas not serviced by the snowmelt system.

dd. Monitor paver conditions during snowmelt season daily, and promptly replace any deteriorated or damaged pavers. Pavers will be pressure washed as needed to enhance the appearance of the Plaza Area.

ee. Ensure fireplaces and fire pits, including lighting, will be operated subject to Village permits, monitored, cleaned, and stocked with wood daily, provided that weather conditions and fire safety concerns are conducive to the use of fireplaces and fire pits.

ff. Ensure plaza furniture will be made of a high quality wood and/or metal, be monitored throughout the day and kept in a condition that enhances the appearance of the Plaza Area.

gg. Ensure that any planters are maintained, replaced and kept in good repair so as to enhance the appearance of the Plaza Area.

hh. Ensure that signage adheres to and is maintained in accordance with municipal code.

(ii) Maintenance of Street and Adjacent Sidewalk Improvements.

aa. Clear and gravel of accumulated snow by 7 am prevailing Mountain Time and keep clear through 7 pm prevailing Mountain Time. Gravel shall be removed in a timely manner as needed to avoid washing into the retention pond.

bb. Clear adjacent sidewalks of accumulated snow by 7 am prevailing Mountain Time and keep clear through 8pm prevailing Mountain Time. Sidewalks will be maintained in a clean and safe condition, including maintenance and replacement of surfaces promptly as needed.

cc. Ensure that signage adheres to and is maintained in accordance with municipal code.

dd. Ensure any planters will be maintained, replaced and kept in good repair so as to enhance the appearance of streets in proximity to planters.

ee. Street improvements and adjacent sidewalks shall be open to the public at all times, subject to temporary closure during maintenance activities.

Section ~~97~~. Adjustment of TSVI Impact Fees, System Development Fees and Franchise Fees.

A. Development Fees. In connection with each individual TSVI project requiring the issuance of a Village construction permit, the Roadway/Pedestrian/Drainage Development Impact Fee, the Parks and Recreation/Open Space Development Impact Fee, the Public Spaces/Recreation Development Impact Fee, and any other Development Impact Fee imposed in connection with water, sewer or natural gas imposed by the Village and made applicable to such project shall be subject to a reduction of between twenty-five percent (25%) and one hundred percent (100%), which shall be mutually agreed upon by the Village and TSVI at the time that such fees would be payable. Factors to be considered in the determination of any fee reduction are the unreimbursed balance of TSVI's upfront outlays towards improvements the fee in question would address along with the Village's current Needs Assessment and Capital Improvements Plan documents at that time.

B. Franchise Fees. In consideration of the financing by TSVI of the construction of portions of the Offsite Utility Improvements, TSVI shall not be obligated to pay new franchise fees or hook-up fees which are not currently imposed by the Village as of the Effective Date but which may in the future be imposed upon natural gas, electric and telecommunication (fiber optic) customers by the Village in connection with the provision of such utility services. TSVI will not be charged such new fees until it is fully reimbursed for its contributions toward the Offsite Utility Improvements. In lieu of paying such fees, TSVI's outstanding reimbursable balance for contributions toward Offsite Utility Improvements shall be reduced by an amount equal to the Franchise Fees at the time charged. TSVI will be obligated to pay all applicable Franchise Fees once it is fully reimbursed for its contributions toward the Offsite Utility Improvements.

Section ~~408~~. Default; Termination.

A. Defaults. Any failure by any party to perform any material term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period.

B. Remedies for Uncured Defaults. Upon the occurrence of a default under this Agreement, the non-defaulting party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing party shall take no further action.

C. Term of Agreement. The term of this Agreement shall commence upon the execution of this Agreement by all parties and shall extend for a period the greater of (i) thirty (30) years hereafter, (ii) the date on which all District Bonds have been paid and are no longer outstanding unless said term is terminated, modified or extended by circumstances set forth in this Agreement, (iii) the date on which TSVI has been fully reimbursed for all costs of Eligible Infrastructure incurred by it, and (iv) by mutual consent of the parties. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect. This Agreement, the Core Village Master Plan, and the conditional use permits on Parcel D and Parcel G, as amended from time to time, shall be fully vested for a period of no less than 30 years from date of execution, notwithstanding any agreements previously made. To the extent permitted by law, special or conditional use permits issued by the Village to TSVI shall not expire while this Agreement remains effective.

Section ~~44~~9. Other General Provisions.

A. Covenants Running with the Land. The provisions of this Agreement constitute covenants running with the Land and are binding upon and inure to the benefit of the parties hereto, their successors and assigns.

B. Notice. Notices concerning the District shall be provided to the parties at the following addresses:

If to the Village:

Village of Taos Ski Valley, New Mexico
Attention: Village Administrator
7 Firehouse Road
Taos Ski Valley, New Mexico 87525
Telephone: (575) 776-8220

With a copy to:

Dennis C. Romero
203 East Coronado Road
Santa Fe, New Mexico 87505
Telephone: (505) 986-8050

If to the ~~PID~~:

~~Village of Taos Ski Valley Public Improvement District
c/o Village Administrator
7 Firehouse Road
Taos Ski Valley, New Mexico 87525
Telephone: (575) 776-8220~~

~~With a copy to:~~

~~Dennis C. Romero
P.O. Box 1932
212 Paseo Del Pueblo Norte
Taos, New Mexico 87571
Telephone: (575) 758-2297~~

~~If to the~~ TIDD:

Village of Taos Ski Valley Tax Increment Development District
c/o Village Administrator
7 Firehouse Road
Taos Ski Valley, New Mexico 87525
Telephone: (575) 776-8220

With copies to:

Dennis C. Romero
P.O. Box 1932
212 Paseo Del Pueblo Norte
Taos, New Mexico 87571
Telephone: (575) 758-2297

Chaz Rockey, CFO
chaz.rockey@skitaos.com
770.874.9109 (office)
917.971.1428 (cell)

If to TSVI:

Taos Ski Valley, Inc.
Chris Stagg
116 Sutton Place
Taos Ski Valley, New Mexico 87525
Telephone: (575) 776-7490

With a copy to:

Joseph F. Canepa
Canepa & Vidal PA
200 W. de Vargas St. #7
P.O. Box 8980
Santa Fe, New Mexico 87504-8980

and

Peter Franklin
Modrall, Sperling, Roehl, Harris & Sisk, PA
123 E. Marcy St. #201
P.O. Box 9318
Santa Fe, New Mexico 87504-9318

For purposes of giving formal written notice, including notice of change of address, the addresses are as set forth in this paragraph unless changed by written notice. Notice may be given either in person or by certified U.S. mail, postage paid.

C. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

D. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

D. Changes to Agreement. Changes to this Agreement are not binding unless made writing and signed by all parties.

E. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is capable of completion.

F. Assignment. This Agreement will not be assigned without the prior written consent of the parties.

G. Recitals. The recitals set forth above are a material part of this Agreement and are incorporated by reference.

H. Recording. This Agreement shall be filed of record in the Taos County Clerk's Office, Taos County, New Mexico.

I. Governing Law. This Agreement shall be governed by and construed in accordance with the law of New Mexico.

J. Audit. The Village shall have the right to audit all expenditures of each District and expenditures of TSVI in connection with community facilities or public improvements to be dedicated to the Village, at no cost to the Village, through an accounting firm approved by the Village Treasurer.

IN WITNESS WHEREOF, the Village has caused this Agreement to be executed in its corporate name and the seal of the Village affixed and attested by its duly authorized officers; the ~~PID~~ and the TIDD ~~have each~~ has executed this Agreement in its corporate name and attested by its duly authorized officer; and TSVI has executed this Agreement in its respective corporate name and, as applicable, attested by its respective duly authorized officers.

VILLAGE OF TAOS SKI VALLEY,
NEW MEXICO

By: _____
Neal King, Mayor

[SEAL]

ATTEST:

By: _____
Ann Wooldridge, Village Clerk

TAOS SKI VALLEY, INC.,
a New Mexico Corporation

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

VILLAGE OF TAOS SKI VALLEY
TAX INCREMENT DEVELOPMENT DISTRICT

By: _____
Neal King, Chairperson

ATTEST:

By: _____
Ann Wooldridge, District Clerk

~~TAOS SKI VALLEY
PUBLIC IMPROVEMENT DISTRICT~~

By: _____
_____, Chairperson

ATTEST:

By: _____
_____, District Clerk

|

STATE OF NEW MEXICO)
) ss
COUNTY OF TAOS)

Formatted: No widow/orphan control

This instrument was acknowledged before me on _____, 2016, by Mark Fratrack, Administrator of the Village of Taos Ski Valley, New Mexico.

(SEAL) _____
Notary Public

My Commission Expires:

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2016, by _____, _____ of Taos Ski Valley, Inc., a New Mexico corporation.

(SEAL) _____
Notary Public

My Commission Expires:

STATE OF NEW MEXICO)
) ss
COUNTY OF TAOS)

The foregoing instrument was acknowledged before on _____, 2016 by Neal King, as Chairperson of Village of Taos Ski Valley Tax Increment Development District.

(SEAL)

Notary Public

My Commission Expires:

~~STATE OF NEW MEXICO)
) ss
COUNTY OF TAOS)~~

~~The foregoing instrument was acknowledged before on _____, 2016 by _____, as Chairperson of Taos Ski Valley Public Improvement District.~~

~~(SEAL)~~

~~_____
Notary Public~~

~~My Commission Expires:~~

EXHIBIT A

Legal Description of the Land

EXHIBIT B

TIDD Formation Resolution

EXHIBIT C

Updated Plan of Finance
(including Financing Sources and Uses for Project Infrastructure)

[to be attached]

EXHIBIT D

TIDD Boundary Map

[to be attached]

EXHIBIT E

Public Improvement District Bond Financing Provisions

[Subject to Completion upon Adoption of PID Formation Resolution
and Modification in Conformity therewith]

~~1. PID Bonds to be Issued within Parameters Authorized by Formation Documents. The PID shall issue the Bonds in accordance with the Formation Resolution, the District General Plan and PID Feasibility Study. The PID may, in the future, issue district revenue bonds or special levy bonds as provided by the Act. Under no circumstances will the Village be obligated for the payment of bonds or other financial obligations of the PID.~~

~~A. Special Levy. The Special Levy, as defined in the Rate and Method of Apportionment of Special Levy (the "Rate and Method") attached to the District General Plan as Exhibit ___ shall be imposed on the taxable parcels of real property located in the PID (as identified in Section ___ and Exhibit ___ of the District General Plan) and the revenues of the Special Levy shall secure the debt service payments due on PID Bonds, as provided in the Act.~~

~~(i) The PID may issue Special Levy Revenue Bonds in an estimated maximum aggregate principal amount of \$_____, in one or more series, the proceeds of which shall be used to defray the cost of constructing the Eligible Infrastructure not otherwise reimbursed to TSVI from other sources and for such other purposes authorized under the Act.~~

~~(ii) At or after the time the PID has incurred a reimbursement obligation as provided in the Amended and Restated Master Development Agreement, the PID may issue reimbursement certificates or other obligations to TSVI providing for reimbursement of TSVI from accumulated Special Levy revenues for Reimbursable Costs.~~

~~(iii) The Special Levy shall meet the following conditions, as set forth in Exhibit ___ of the PID Feasibility Study:~~

~~(aa) The maximum annual special levy for the PID will be \$_____.~~

~~(bb) The anticipated maximum annual special levy per dwelling unit is not expected to exceed (i) \$_____ per year for any residential property zoned ____, (ii) \$_____ per year for any residential property zoned ____, (iii) \$_____ per year for any residential property zoned ____, and \$_____ year per net square foot of nonresidential property. The PID will not increase the maximum annual special levy except as permitted by the Act, pursuant to which the anticipated maximum special levy amounts set forth to be subject to further increases as imposed by the Governing Body of the PID pursuant to §§5-11-20(F)(1) NMSA 1978 and the Rate and Method. The maximum amount of special levy that may be imposed shall not be increased over time by an amount exceeding two percent per year, except that the annual special levy collected from each tract or lot may be increased by up to 10% per fiscal year due to delinquency or default by the owner of any other lot subject to the Special Levy.~~

~~_____ (cc) Pursuant to the Rate and Method, the Special Levy shall be apportioned based on zoning category. The proceeds of the Special Levy shall be used to pay principal and interest on the District Bonds and to pay expenses pertaining to the billing, collection and administration of the Special Levy Bonds and the budgeted annual administrative costs of the PID.~~

~~2. Application of Proceeds of PID Bonds. In connection with the issuance and delivery of PID Bonds, proceeds of the Bonds shall be deposited to the credit of the "Project Fund" (to be defined in the Indenture) the balance remaining from the proceeds of the PID Bonds after the deposits for the payment of interest, costs of issuance, the debt service reserve account (if any) and such other funds and accounts as will be more specifically described in the Indenture. Moneys in the Project Fund shall be disbursed by the Trustee to TSVI to pay or reimburse TSVI for Reimbursable Costs of PID Eligible components and the incidental and other costs and expenses eligible for payment from the proceeds of the Bonds under the PID Act and the Indenture, pursuant to disbursement procedures set forth in the Indenture.~~

~~3. PID Bond Financing Requirements. The issuance of the Bonds by the PID shall be subject to the following requirements and limitations:~~

~~_____ A. The transaction shall include a reasonably required debt service reserve funded from bond proceeds or other legally available sources.~~

~~_____ B. The Special Levy assessed on taxable parcels within the PID shall be sufficient to generate 110% of the maximum annual debt service requirements of all PID Bonds outstanding and proposed to be issued, plus annually budgeted administrative expenses of the PID.~~

~~_____ C. The aggregate principal amount of the bonds shall constitute no more than 25% of the total value of the taxable parcels within the PID.~~

~~_____ D. Unless otherwise authorized or limited by applicable law, the total overlapping tax and assessment burden, including the Special Levy, shall not exceed 1.95% of the average estimated value of each category of real property subject to the Special Levy assuming that a certificate of occupancy or completion has been issued.~~

~~_____ E. TSVI shall have contributed minimum equity, excluding real property, of at least 20% of the cost of the Eligible Infrastructure components to be reimbursed with proceeds of PID Bonds.~~

~~_____ F. The Indenture shall include a table identifying completed Eligible Infrastructure components for which (i) Reimbursable Costs have previously been paid, (ii) the source of such previous payment (e.g. PID, TIDD or other identified source), (iii) the Reimbursable Costs to be paid from proceeds of the bonds to which the Indenture relates, and (iv) the amount Reimbursable Costs which will remain unpaid.~~

~~———— G. ——— If publicly marketed as securities without an investment grade rating, the Bonds shall include explicit disclosure of the investment risk associated with land secured indebtedness either rated below investment grade or unrated.~~

~~———— H. ——— PID financing shall have no direct or indirect negative impact on the debt or financing capabilities of the Village.~~

~~———— I. ——— The transaction shall be subject to such other provisions as shall be mutually agreed upon by the Village, the PID and TSVI.~~

~~4. ——— Plan of Finance. The PID shall implement the Updated Plan of Finance attached to this Agreement as Exhibit C in accordance with the Formation Documents.~~

~~5. ——— Procedures for Foreclosure in Connection with Delinquent Special Levies. Pursuant to §§ 5-11-20(G) and 5-11-23(F) NMSA 1978, as amended, and Section _____ of the PID Formation Resolution, the PID shall establish foreclosure and redemption procedures for delinquent special levies in substantially the following form:~~

~~———— A. ——— The PID may institute foreclosure proceedings against a delinquent special levy after six months following written notice of the delinquency to the owner of the real property to which the delinquency applies. Delinquencies shall be determined as follows:~~

~~———— (i) ——— On or before December 15 and May 15 of each year in which the Special Levy is in effect, the PID Treasurer or Special Levy consultant shall review the public records of Taos County relating to the collection of the Special Levy in order to identify the real property to which any Special Levy delinquency applies.~~

~~———— (ii) ——— Within 60 days after identifying delinquencies in payment of the Special Levy in each year in which the Special Levy is in effect, the PID shall provide written notice of delinquency (“Notice”) to the owner of any parcel determined to be delinquent, which Notice shall state (1) the amount of the delinquency as of the date of the Notice, (2) that the delinquency, including applicable interest and penalties, must be cured within 180 days following the date of the Notice (the “Notice Date”), and (3) if the delinquency is not cured within that 180 day period, the PID or its designee shall have the power to commence foreclosure proceedings with respect to the real property to which the delinquency applies.~~

~~———— (iii) ——— Not later than 15 days after the expiration of the 180 day period provided in a Notice, the PID shall have the power to institute foreclosure proceedings with respect to all parcels or tracts for which a Notice has been provided. (ii) ——— Any proceedings of the PID for foreclosure of special levy delinquencies shall be instituted and pursued in the manner provided by law for the foreclosure of mortgages on real estate.~~

~~———— B. ——— In any action seeking the foreclosure of a special levy lien after special levy bonds have been issued, if there is no other purchaser for the tract of land having a delinquent special levy, the PID or the Trustee may:~~

~~—————(i)——— Purchase the tract or parcel sold at the foreclosure sale; and~~

~~—————(ii)——— Bid, in lieu of cash, the amount of the special levy, interest, penalties, attorneys' fees, and costs found by the court to be due and payable under the Notice of Formation and Imposition of Special Levy filed of record in the Taos County Clerk's Office, Taos County, New Mexico, creating the lien and any cost taxed by the court in the foreclosure proceedings against the property ordered sold.~~

~~—————(iii)——— Upon the purchase of the tract or parcel, title to the tract or parcel of land, subject to the right of redemption provided by paragraph (vi) of this section, vests in the Trustee of the fund from which the special levy bonds are payable.~~

~~—————C.——— No real property shall be sold to satisfy a delinquent assessment until at least fifteen days after the date of the order, judgment or decree of the court, within which time the owner of the tract or parcel of land may pay off the decree and avoid the sale.~~

~~—————D.——— After the expiration of the fifteen day period, the property may be sold at a public or private sale subject to the right of redemption.~~

~~—————E.——— Any property sold under any order, judgment, or decree of court to satisfy the special levy lien may be redeemed at any time within one year of the date of sale by the owner or mortgage holder or other person having an interest, or their assigns, by repaying to the purchaser or his assign the amount paid plus interest from the date of purchase at a rate of twelve percent per year.~~

~~—————F.——— The proceeds of the sale of the foreclosed tract or parcel of land at either a public or private sale shall be applied as follows:~~

~~—————(i)——— First, to the payment of costs in giving notice of the sale and of conducting the sale;~~

~~—————(ii)——— Second, to costs and fees taxed against the tract or parcel of land in the foreclosure proceedings;~~

~~—————(iii)——— Third, on a pro rata basis, to the indebtedness claimed under the special levy lien and any other lien on the property that has a priority coequal to the special levy lien;~~

~~—————(iv)——— Fourth, after all costs, liens, assessments, and taxes are paid, to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon the foregoing person's providing satisfactory proof to the court of the interest and upon approval of the court.~~

~~—————G.——— Special Levy revenue shall be paid into the proper funds and accounts established in the PID Indenture for payment of the principal and interest on special levy bonds, costs of collection and other annually budgeted administrative expenses of the PID.~~

~~_____ H. _____ No public rights of way or public property shall be subject to foreclosure pursuant to this Agreement.~~

~~EXHIBIT F~~

Tax Increment Development District Bond Financing Provisions
~~[Subject to Completion upon Adoption of TIDD Formation Resolution
and Modification in Conformity therewith]~~

1. TIDD Bonds to be Issued within Parameters Authorized by Formation Documents. The District may issue TIDD Bonds payable from Tax Increment Revenues in accordance with the Tax Increment Development Plan, this Agreement and the Indenture.

A. Dedicated Village Gross Receipts Tax Increment Revenue.

(i) The Village has dedicated seventy-five percent (75%) of the Gross Receipts Tax Increment Revenue generated within the TIDD to the payment of debt service on TIDD Bonds.

(ii) The dedicated Village Gross Receipts Tax Increment Revenue consists of the incremental revenues of

(a) the general purposes municipal gross receipts taxes referenced in §5-15-15(B)(1) of the TIDD Act (the "General Purposes GRT"), currently imposed at the rate of 1.50% of the taxable gross receipts in the TIDD;

(b) the municipal environmental services gross receipts taxes referenced in §5-15-15(B)(2) of the TIDD Act (the "Environmental GRT"), currently imposed at the rate of 0.0625% of the taxable gross receipts in the TIDD;

(c) the municipal infrastructure gross receipts taxes referenced in §5-15-15(B)(3) of the TIDD Act (the "Municipal Infrastructure GRT") currently imposed at the rate of 0.25% of the taxable gross receipts in the TIDD;

(d) the municipal capital outlay gross receipts taxes referenced in §5-15-15(B)(4) of the TIDD Act (the "Municipal Capital Outlay GRT") currently imposed at the rate of 0.25% of the taxable gross receipts in the TIDD; and

(e) the state shared gross receipts taxes distributed to the Village pursuant to §7-1-6.4 NMSA 1978, as provided in §5-15-15(B)(6) of the Act, currently imposed at the rate of 1.225% of the taxable gross receipts in the TIDD which, together with the General Purposes GRT, the Environmental GRT, the Municipal Infrastructure GRT and the Municipal Capital Outlay GRT, is equal to an aggregate 3.2875% of the taxable gross receipts in the TIDD.

(iii) The dedicated Village Gross Receipts Tax Increment Revenue shall include any amendments to or replacements thereof (together, the "Village Gross Receipts Tax Increment Revenue"), but shall not include any future gross receipts tax enactments or

increases by the Village (“Additional GRT Enactments”) without dedication by the Village of such Additional GRT Enactments. In connection with Additional GRT Enactments, if any, the “Base Gross Receipts Taxes” as defined in §5-15-3(A) of the TIDD Act shall not include any increases to such Base Gross Receipts Taxes resulting from the application of §5-15-3(A)(2) of the TIDD Act to Additional GRT Enactments.

B. Dedication of State Gross Receipts Tax Increment Revenue.

(i) Pursuant to Section 5-15B-1 NMSA 1978, the Legislature of the State has authorized the TIDD to issue bonds not to exceed \$44,000,000 in net proceeds, as adjusted for inflation, secured by tax increment revenues authorized by the TIDD Act, including a dedication of fifty percent (50%) of the State Gross Receipts Tax Increment revenues generated within the TIDD (the “Appropriation”), which State Gross Receipts Tax is currently imposed at the rate of 5.125% of the taxable gross receipts in the TIDD (the “State GRT Increment”).

(ii) The provisions, terms and conditions of the Appropriation and the State Board of Finance approval shall govern the pledge of State Gross Receipts Tax Increment Revenue by the TIDD and the issuance of tax increment revenue bonds secured thereby, including, without limitation, review and approval by the New Mexico Finance Authority of the indenture or indentures under which such bonds are to be issued prior to issuance, amendments to the indentures prior to such amendments becoming effective.

(iii) Except to the extent inconsistent with the provisions of the immediately preceding subparagraph (ii), the other terms and provisions of this Agreement, including those contained in this Exhibit F, shall apply to the use of State GRT Increment by the TIDD.

C. Dedication of Village Property Tax Increment Revenue. The Village has dedicated 75% of the *ad valorem* Village property tax generated within the TIDD, which property tax is currently imposed by the Village at the rate of \$7.65 per \$1,000 of taxable property value within the Village.

D. Dedication of County Property Tax Increment Revenue. The Board of Commissioners of Taos County, New Mexico (the “County”) has dedicated to the TIDD thirty-five percent (35%) of the *ad valorem* property tax increment revenue attributable to the *ad valorem* property tax levied by the County on taxable parcels within the TIDD for the purpose of paying the principal of and interest on tax increment revenue bonds issued by the District, the funding of debt service reserves, if necessary, in connection with TIDD Bonds, and for such other District purposes which are authorized by law.

E. Collection and Remittance of Tax Increment Revenue. Tax Increment Revenues shall be collected and remitted to the TIDD at the first possible time that remittance can be accomplished following the formation of the TIDD, as provided in the TIDD Act. The TIDD will pledge, pursuant to the TIDD Indenture, such increment revenue as security for the

TIDD Bonds. The TIDD may, in the future, issue TIDD Bonds as provided by the Act, the TIDD Formation Resolution, the TIDD Plan and this Agreement.

E. Under no circumstances will the Village be responsible for the payment of TIDD bonds or any other financial obligations of the TIDD. All bonds issued by the TIDD shall state that the owners of the TIDD Bonds shall have no recourse to the taxing power of the Village or to any Village property, funds or resources, other than Tax Increment Revenues dedicated to the TIDD. Tax Increment Revenues collected or received by the TIDD shall be deemed to be held in trust and shall be deposited by the TIDD with the Trustee under an Indenture or Indentures as required in order for the TIDD to meet its obligations under this Agreement.

F. In the event that Tax Increment Revenues decline by any act of the State of New Mexico to reduce the amount of state shared gross receipts taxes distributed to the Village pursuant to §7-1-6.4 NMSA 1978, as provided in §5-15-15(B)(6) of the Act, then the Village shall have neither liability as to decreases in the Tax Increment Revenues caused by any such State action nor obligation to dedicate additional Tax Increment Revenue to the District.

2. Issuance of TIDD Bonds. Pursuant to and in compliance with the Act, the TIDD Resolution and the Tax Plan, the TIDD shall be authorized to issue one or more series of TIDD Bonds, net proceeds which shall be used for the purpose of reimbursing TSVI for the actual costs of completed Eligible Infrastructure components which have not been reimbursed from any other financing source as of the time such TIDD Bonds are issued.

A. Reimbursable costs may include, without limitation, costs of TIDD formation, planning, design, engineering, surveying, testing, storm water pollution prevention plan compliance, construction, pre-completion stabilization, maintenance and inspections, construction management not to exceed (5%) of the contract price, permit and inspection fees, gross receipts taxes or acquisition of such infrastructure construction contingencies not to exceed an aggregate of 25% of hard costs, and gross receipts taxes, in an amount not to exceed the actual cost of the Eligible Infrastructure components.

B. Proceeds of TIDD Bonds may also be used to fund debt service reserves, capitalized interest, credit enhancement, costs of issuance and sale and other costs normally associated with the issuance of TIDD Bonds as permitted by the TIDD Act.

C. The maximum aggregate principal amount of TIDD Bonds issued by the District shall not exceed the lesser of (i) Reimbursable Costs, plus amounts to be used to fund debt service reserves, capitalized interest, credit enhancement, costs of issuance and sale, and other costs normally associated with the issuance of TIDD Bonds as permitted by the Act, or (ii) \$40,000,000, plus the amount determined as the increase in the cost of constructing public infrastructure improvements by applying the Construction Cost Index applicable to the Albuquerque region published in ENR.com by the McGraw-Hill Companies (or, in the event such index is no longer published at the applicable time, such other index of construction costs as the TIDD and the Village Administrator or successor in function mutually determine is acceptable for purposes of this Agreement and the Formation Documents).

3. Bond Financing Requirements. All TIDD Bonds shall be issued within the parameters set forth in the Updated Plan of Finance and Schedule attached to this Agreement as Exhibit C and the TIDD Plan, and as otherwise provided in this Agreement or the Master Indenture, as supplemented or amended from time to time..

A. It is anticipated that the TIDD will issue a Draw-down Bond with a maximum principal amount not to exceed the amount authorized in Section 5-15B-1 NMSA 1978, against which maximum principal amount TSVI will request advances for reimbursement of Reimbursable Costs, which shall be made by the purchaser of the Draw-down Bond, and which shall be repaid, with interest, by the TIDD from accumulated Tax Increment Revenues within 30 days after each such advance has been made..

B. It is anticipated that the TIDD will may up to 5 series of short-term Tax Increment Revenue Bonds maturing not later than 30 days after issuance.

B. Longer-term Tax Increment Revenue Bonds shall be issued in accordance with the Plan of Finance included in the TIDD Plan, except as otherwise agreed by TSVI and the TIDD.

C. Longer-term Tax Increment Revenue Bonds shall include a reasonably required debt service reserve funded from bond proceeds or other legally available sources.

D. TSVI shall have contributed minimum equity, excluding real property, of at least 20% of the Reimbursable Costs of Eligible Infrastructure components to be reimbursed with proceeds of TIDD Bonds, which contribution shall be reimbursable to TSVI, as provided in the Formation Documents and the TIDD Act.

E. The Indenture shall include a table identifying completed Eligible Infrastructure components for which (i) Reimbursable Costs have previously been paid, (ii) the source of such previous payment (e.g. ~~PHD~~the TIDD or other identified source), (iii) the Reimbursable Costs to be paid from proceeds of the bonds to which the Indenture relates, and (iv) the amount Reimbursable Costs which will remain unpaid.

F. If publicly marketed as securities without an investment grade rating, the Bonds shall include explicit disclosure of the investment risk associated with land-secured indebtedness either rated below investment grade or unrated.

G. TIDD financing shall have no direct or indirect negative impact on the debt or financing capabilities of the Village.

H. Each transaction shall be subject to such other provisions as shall be mutually agreed upon by the Village, the ~~PHD~~TIDD and TSVI.

4. No Operating Tax Levy. The TIDD shall not be authorized to impose an operating tax levy not to exceed \$5.00 per \$1,000 of the assessed value of the taxable property within its boundaries, as provided in Section 5-15-13 of the Act.