

OPERATION FUNDING AGREEMENT

This **OPERATION FUNDING AGREEMENT** (“**Agreement**”) is made and entered into this 8th day of December, 2016, with an effective date of the 11th day of November, 2016, by and between **SHERIDAN STATION WEST METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”) and **SHERIDAN STATION TRANSIT VILLAGE LLC**, a Colorado limited liability company (the “**Developer**”) (individually, each a “**Party**”, and collectively, the “**Parties**”).

RECITALS

A. Developer is the owner of property within a project located in the City of Lakewood, Colorado (the “**City**”), commonly known as Sheridan Station West (the “**Property**”).

B. Pursuant to the authority granted to the District by its Service Plan, as approved by the City Council on August 22, 2016, as it may be amended from time to time (the “**Service Plan**”), the District intends to construct and/or acquire certain public improvements and provide certain services to benefit properties within its boundaries and/or service area (the “**District Services**”).

C. The District Services will benefit the Property.

D. In order for the public improvements to be constructed and/or acquired it is necessary for the District to be able to pay its ongoing operations and maintenance expenses which enable it to provide the District Services.

E. The District anticipates that it will not have sufficient revenues to make payment of its operations and maintenance expenses for fiscal years 2016 – 2017.

F. In order to enable the District to provide District Services, Developer is willing to advance funds to the District or to pay consultants directly for operations and maintenance expenses pursuant to the terms of this Agreement.

G. The District’s Service Plan authorizes the repayment of amounts advanced for operations and maintenance expenses, together with interest thereon, by the District.

H. The District and the Developer desire to set forth the rights, obligations and procedures for the Developer to advance funds and for the District to reimburse the Developer for the advances made hereunder.

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

COVENANTS AND AGREEMENTS

1. Acknowledgement of Anticipated Shortfalls. The District anticipates a shortfall in revenues available for operations and maintenance expenses to be incurred for fiscal years 2016 through 2017 in an aggregate amount of Fifty Thousand Dollars (\$50,000.00) (the “**Shortfall Amount**”).
2. Payment of Shortfall. The Developer shall advance funds necessary to fund, or shall directly pay, the District’s operations and maintenance expenses on a periodic basis as needed for the fiscal years 2016 through 2017 up to the Shortfall Amount. The District shall, from time to time, provide written notice to the Developer that an advance of all or part of the Shortfall Amount is required. The Developer shall make an advance of funds to the District within fifteen (15) days of receipt from the District of any such written notice that an advance of funds is required (“**Developer Advance**”).
3. Request for Additional Developer Advance. If the District requires additional advances above the Shortfall Amount from the Developer in order to meet its operation and maintenance expenses, the District shall request such additional funds in writing. Such request shall be accompanied by written explanation regarding the reasons additional funds are required. The Developer shall provide such additional funds within fifteen (15) days of receipt of notice requesting such funds. The amount of the additional funds shall be added to and included in the Shortfall Amount.
4. Accounting. The Developer shall provide the District with written documentation relative to any expenses paid directly to consultants. The District shall keep an accounting of each advance made by the Developer, including the accrued and unpaid interest on such advances, and shall provide unaudited financial statements reflecting this accounting to the Developer on a quarterly basis.
5. Repayment. The District hereby agrees that it is its intention to repay the amounts the Developer has advanced or directly paid pursuant to this Agreement, including any amounts paid directly by the Developer during any period of inactive status pursuant to Section 7 below, to the extent it has funds available from the imposition of its taxes, fees, rates, tolls, penalties and charges, and from any other revenue legally available, after the payment of its annual debt service obligations and annual operations and maintenance expenses, which repayment is subject to annual budget and appropriation. Simple interest shall accrue on each Developer Advance from the date of deposit into the District’s account or from the date of direct payment by Developer, until paid, at the rate of eight percent (8%) per annum. It is hereby agreed and acknowledged that this Agreement evidences an intent to reimburse the Developer hereunder, but that this Agreement shall not constitute a debt or indebtedness of the District within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation, and the making of any reimbursement hereunder shall be at all times subject to annual appropriation by the District in its absolute discretion. By acceptance of this Agreement, Developer agrees and consents to all of the limitations in respect of the payment of the principal and interest due hereunder and in the District’s Service Plan.

6. Priority of Payments. Subject to the provisions of Section 5 above, payments to reimburse the Developer shall be made on December 2 of each year and shall be applied as follows: first to the accrued and unpaid interest and then to the principal amount due pursuant to this Agreement.

7. Inactive Status. The Developer acknowledges the District may elect to be inactive in any one or more of the years this Agreement is in effect, and the Developer and the District agree that, during the period of inactivity the District shall:

- (a) have no financial obligations outstanding or contracts in effect that require performance by the District;
- (b) not impose a mill levy for tax collection;
- (c) not anticipate any receipt of revenue and shall have no planned expenditures, except for statutory compliance, in said fiscal year(s);
- (d) have no operation or maintenance responsibility for any facilities; and
- (e) will file an initial notice of inactive status pursuant to Section 32-1-104, C.R.S., and each year thereafter that the District continues to be inactive, the District shall file a notice of inactive status pursuant to Section 32-1-104(4), C.R.S.

By acceptance of this Agreement, Developer agrees, throughout any period of inactivity, to directly pay for any operation and maintenance expenses of the District which may be required to maintain the District's corporate existence and compliance with applicable laws, rules and regulations of the State of Colorado and the City. Developer further acknowledges and agrees that during any period of District inactivity, the District shall have no obligations, including no obligations to make reimbursements, under this Agreement and shall not be required to take any other actions hereunder. Further, by acceptance of this Agreement, Developer agrees and consents to all of the limitations in respect of the payment of the principal and interest due hereunder and in the District's Service Plan.

8. Representations. Developer hereby represents and warrants to and for the benefit of the District as follows:

- (a) The Developer is a Colorado limited liability company in good standing under the law of the State of Colorado.
- (b) Developer has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement nor the compliance by the Developer with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which Developer is a party or by which Developer is or may be bound. Developer has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

(c) Developer represents that it has sufficient available funds to fulfill its obligations under this Agreement.

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

9. Term/Repose. The term of this Agreement shall commence on the date hereof and shall expire on December 31, 2046, unless terminated earlier by the mutual agreement of the Parties. Any obligation of Developer to advance funds will expire upon advance to the District of amounts sufficient to pay expenses incurred in fiscal years 2016 through 2017, not to exceed the Shortfall Amount. Any obligation of District to reimburse Developer shall expire on December 31, 2046. In the event the District has not reimbursed the Developer for any Developer Advance(s) made pursuant to this Agreement on or before December 31, 2046, any amount of principal and accrued interest outstanding on such date shall be deemed to be forever discharged and satisfied in full.

10. Termination of Reimbursement Obligations. Notwithstanding any provision herein to the contrary, the District's obligations to reimburse the Developer for any and all funds advanced or otherwise payable to the Developer under and pursuant to this Agreement (whether the Developer has already advanced or otherwise paid such funds or intends to make such advances or payments in the future) shall terminate automatically and be of no further force or effect upon the occurrence of: (a) the Developer's voluntary dissolution, liquidation, winding up, or cessation to carry on business activities as a going concern; (b) administrative dissolution (or other legal process not initiated by the Developer dissolving the Developer as a legal entity) that is not remedied or cured within sixty (60) days of the effective date of such dissolution or other process; or (c) the initiation of bankruptcy, receivership or similar process or actions with regard to the Developer (whether voluntary or involuntary). The termination of the District's reimbursement obligations as set forth in this section shall be absolute and binding upon the Developer, its successors and assigns. The Developer, by its execution of this Agreement, waives and releases any and all claims and rights, whether existing now or in the future, against the District relating to or arising out of the District's reimbursement obligations under this Agreement in the event that any of the occurrences described in this section occur.

(a) Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Sheridan Station West Metropolitan District
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, CO 80228
Attention: Lisa Johnson
Phone: 303-987-0835
Email: ljohnson@sdmsi.com

With a copy to: McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203-1254
Attention: Megan Becher
Phone: 303-592-4380
Email: mbecher@specialdistrictlaw.com

To Developer: Sheridan Station Transit Village LLC
2295 S. Lipan Street
Denver, CO 80223
Attention: Doug Elenowitz
Phone: 303-727-5651
Email: doug@trailbreakpartners.com

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

11. Assignment. The Developer shall not assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

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

13. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such litigation, arbitration or other proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

14. Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the State District Court in and for the County of Jefferson, Colorado.

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

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

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

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

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

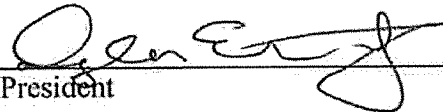
20. Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto; provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the Developer unless the same is in writing and duly executed by the Parties hereto.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO OPERATION FUNDING AGREEMENT]

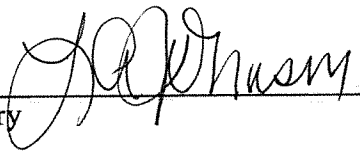
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

**SHERIDAN STATION WEST
METROPOLITAN DISTRICT**, a quasi-municipal
corporation and political subdivision of the State of
Colorado

By: 

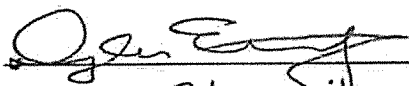
President

Attest:



Secretary

**SHERIDAN STATION TRANSIT VILLAGE
LLC**, a Colorado limited liability company

By: 

Name: Doug Elenowitz

Its: _____