

CLUBHOUSE FUNDING, CONSTRUCTION, AND OPERATIONS AGREEMENT

THIS CLUBHOUSE FUNDING, CONSTRUCTION, AND OPERATIONS AGREEMENT (this “**Agreement**”) is entered into this 19th day of November, 2019, by and among **STONE CREEK METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“**Stone Creek MD**”), **CHOKE CHERRY INVESTORS, LLC**, a Colorado limited liability company (the “**Stone Creek Developer**”), **CIELO METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“**Cielo MD**”), and **FORESTAR (USA) REAL ESTATE GROUP INC.**, a Delaware corporation (the “**Cielo Developer**”) (individually, each a “**Party**” and collectively the “**Parties**”). Stone Creek MD and Cielo MD are each a “**District**” and collectively, are the “**Districts**.” The Stone Creek Developer and the Cielo Developer are collectively, the “**Developers**.”

RECITALS

- A. Stone Creek Developer and Stone Creek MD are the owners of a portion of certain property located in Douglas County, Colorado (the “**County**”), commonly known as Stone Creek Ranch (the “**Stone Creek Ranch Property**”).
- B. The Stone Creek Ranch Property adjoins certain property located in the County owned by the Cielo Developer, commonly known as Cielo (the “**Cielo Property**”).
- C. The Douglas County Board of County Commissioners approved the Service Plan for Stone Creek MD on September 23, 2014, as the same may be amended from time to time (the “**Stone Creek Service Plan**”). The Stone Creek Service Plan provides that Stone Creek MD’s first phase of development will include 329 residential units.
- D. The Stone Creek Ranch Property is within the boundaries of the Stone Creek MD.
- E. The Douglas County Board of County Commissioners approved the Service Plan for Cielo MD on September 8, 2015, as the same may be amended from time to time (the “**Cielo Service Plan**”, and together with the Stone Creek Service Plan, the “**Service Plans**”). The Cielo Service Plan provides that the Cielo MD will include 343 residential units.
- F. The Cielo Property is within the boundaries of the Cielo MD.
- G. The Service Plans authorize each of the Districts to finance and construct street, park and recreation, water, sanitary and storm drainage, television relay and translation equipment and mosquito control improvements for the benefit of their taxpayers and residents, within and outside their respective boundaries (the “**Public Improvements**”).
- H. Pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a), and Section 29-1-203, C.R.S., metropolitan districts may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, including the sharing of costs, the imposition of taxes and the incurring of debt; and further provide that a contract may be entered into for any period, notwithstanding any provision of law limiting the length of financial contracts or obligations of governments.

I. Stone Creek Developer intends to construct and finance a public clubhouse, swimming pool, and related public improvements generally described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “**Clubhouse Improvements**”) for the benefit of the general public including the taxpayers and residents of Stone Creek MD and Cielo MD.

J. Stone Creek MD and the Stone Creek Developer entered into the following funding agreements:

(a) That certain Facilities Acquisition Agreement dated August 4, 2016 (the “**Stone Creek FAA**”), pursuant to which the Stone Creek Developer agreed to construct certain improvements and the Stone Creek MD agreed to reimburse the Stone Creek Developer for certain certified construction costs and organization expenses once Stone Creek MD issues bonds in an amount sufficient to reimburse the Stone Creek Developer for all or a portion of the certified construction costs and/or organization expenses; and

(b) That certain 2014-2015 Operation Funding Agreement, effective December 15, 2014 (“**Stone Creek 2014-2015 OFA**”), as amended by that certain First Amendment to 2014-2015 Operation Funding Agreement, effective date of January 1, 2016 (“**First Amendment to Stone Creek 2014-2015 OFA**”), and further amended by that certain Second Amendment to Operation Funding Agreement, dated November 30, 2016 (“**Second Amendment to Stone Creek 2014-2015 OFA**”), and further amended by that Third Amendment to Operating Funding Agreement, dated November 30, 2017 (“**Third Amendment to Stone Creek 2014-2015 OFA**”) (the Stone Creek 2014-2015 OFA, the First Amendment to Stone Creek 2014-2015 OFA, the Second Amendment to Stone Creek 2014-2015 OFA, and the Third Amendment to Stone Creek 2014-2015 OFA, are collectively, the “**Stone Creek OFAs**”), pursuant to which the Stone Creek Developer agreed to advance funds to Stone Creek MD, or to pay consultants directly for operations and maintenance expenses (the “**Stone Creek MD O&M Shortfall Amount**”), and Stone Creek MD agreed, 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, to repay the operations and maintenance advances made by the Stone Creek Developer, together with interest thereon.

K. Stone Creek Developer intends to convey, and Stone Creek MD intends to acquire, the Clubhouse Improvements subject to the provisions of this Agreement and the Stone Creek FAA.

L. Stone Creek MD anticipates reimbursing Stone Creek Developer for those costs related to the construction of the Clubhouse Improvements, as verified by an independent engineer (the “**Clubhouse Construction Costs**”) as provided for in this Agreement and the Stone Creek FAA.

M. Stone Creek MD intends to operate and maintain the Clubhouse Improvements subject to the terms of this Agreement and the Stone Creek OFAs.

N. Cielo MD and the Cielo Developer entered into that certain Operation Funding Agreement dated November 30, 2016, as amended from time to time (the “**Cielo OFA**”, and collectively with the Stone Creek FAA, the Stone Creek OFAs, and the Cielo OFA, the “**District Funding Agreements**”), pursuant to which the Cielo Developer agreed to advance funds to Cielo MD, or to pay consultants directly for operations and maintenance expenses (the “**Cielo MD O&M Shortfall Amount**”), and Cielo MD agreed, 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, to repay the operations and maintenance advances made by the Cielo Developer, together with interest thereon.

O. Cielo MD intends to share in the costs related to operations and maintenance of the Clubhouse Improvements in accordance with this Agreement, and the Cielo OFA.

P. The Districts have determined that for reasons of economic efficiency and timeliness, it is in the best interests of the Districts for the Stone Creek Developer to construct or cause construction of the Clubhouse Improvements and for Stone Creek MD to acquire the Clubhouse Improvements and operate and maintain same, pursuant to this Agreement, the Stone Creek FAA, and the Stone Creek OFAs.

Q. The Districts have determined that for reasons of economic efficiency and timeliness, it is in the best interests of the Districts for Cielo MD to participate in a cost sharing agreement with Stone Creek MD wherein both Stone Creek MD and Cielo MD pay their respective proportionate share of the operations and maintenance costs, inclusive of all legal costs, management costs, accountant costs and other consulting fees not included in the Clubhouse Construction Costs (the “**Clubhouse O&M Costs**”, and collectively with the Clubhouse Construction Costs, the “**Clubhouse Improvement Costs**”).

R. The Districts anticipate that until such time as revenue received from the imposition of their respective general fund *ad valorem* property taxes upon the Stone Creek Ranch Property and the Cielo Property, funding for the Clubhouse O&M Costs will be provided pursuant to the Stone Creek OFAs and the Cielo OFA, respectively, and proportioned according to this Agreement.

S. In order to provide for the efficient, managed and coordinated financing and construction of the Clubhouse Improvements, the Parties now desire to enter into this Agreement to set forth the rights, obligations, and procedures for the construction of the Clubhouse Improvements, and the cost sharing agreement related to the Clubhouse O&M Costs.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the Districts and Developers agree as follows:

AGREEMENT

1. Allocation of Clubhouse Construction Costs. The Districts and the Developers expressly intend that, for the Clubhouse Improvements to be constructed pursuant to this Agreement, the Clubhouse Improvement Costs shall be funded by Stone Creek Developer with

such Clubhouse Improvements subject to reimbursement to the Stone Creek Developer by the Stone Creek MD in compliance with, and subject to, the Stone Creek FAA.

2. Allocation of Clubhouse O&M Costs. The Districts expressly intend that, in order to fund the Clubhouse O&M Costs, the Clubhouse O&M Costs shall be allocated among the Districts in proportion to the benefits such Clubhouse Improvements will provide to each District, which the Districts hereby acknowledge and agree to be calculated by dividing the number of residential units within the boundaries of each respective District (Stone Creek, 329 units; Cielo, 343 units) by the total number of units between the Districts (672 total units).

(a) Stone Creek MD Allocation of Clubhouse O&M Costs. Stone Creek MD shall pay forty nine percent (49%) of the Clubhouse O&M Costs (329 units in Stone Creek MD / 672 total residential units = 49%) (the “**Stone Creek MD Allocation**”).

(b) Cielo MD Allocation of Clubhouse O&M Costs. Cielo MD shall pay fifty one percent (51%) of the Clubhouse O&M Costs (343 units in Cielo MD / 672 total residential units = 51%), plus simple interest as described below (“**Cielo MD Allocation**”).

(i) Simple interest shall accrue on the Cielo MD Allocation from the date of receipt by Stone Creek MD or the Stone Creek Developer of a certificate of occupancy for the Clubhouse at the rate of the current Bond Buyer 20-Bond GO Index plus four percent (4%) per annum; however, in no event shall interest on such Organization Expenses exceed eight percent (8%) per annum.

3. Budget Process.

(a) Initial Construction Costs. Stone Creek Developer has provided to Cielo MD and the Developers, a construction budget (the “Initial Construction Budget”), attached hereto as Exhibit B and incorporated herein by reference, and initial construction schedule (the “Initial Construction Schedule”), attached hereto as Exhibit C and incorporated herein by reference, for the Clubhouse Improvements. The Parties hereby agree to the Initial Construction Budget and the Initial Construction Schedule. However, such acceptance, or deemed acceptance, by the Stone Creek MD shall not be considered a promise to reimburse the Stone Creek Developer in full for such amounts as any such reimbursement remains subject to the Stone Creek FAA.

(i) In the event that Stone Creek Developer determines that the actual costs of the Clubhouse Improvements exceed those provided in the Initial Construction Budget, Stone Creek Developer shall provide notice to Stone Creek MD of such increase prior to authorizing the commencement of work regarding same (the “**Change Order Notice**”). If Stone Creek MD does not provide written objection to Stone Creek Developer within ten (10) days of such Change Order Notice, Stone Creek MD shall be deemed to have accepted the change in the Construction Budget. However, such acceptance, or deemed acceptance, by the Stone Creek MD shall not be considered a promise to reimburse the Stone Creek Developer in full for such amounts as any such reimbursement remains subject to the Stone Creek FAA.

(b) Annual Preliminary Budget Process. As part of the annual budget preparation and approval process occurring in the year immediately preceding the corresponding

Budget Year (the “**Planning Year**”), Stone Creek MD shall consult with Cielo MD regarding Stone Creek MD’s operations and maintenance budgets related to the Clubhouse Improvements for the forthcoming budget year (the “**Budget Year**”). Such consultation shall occur early enough in the Planning Year to allow Cielo MD to produce and deliver to Cielo MD a preliminary budget (the “**Preliminary Budget**”) for the Clubhouse O&M Costs for the forthcoming Budget Year on or before September 20th of each Planning Year.

(c) Annual Budget Review and Approval. On or before November 1 of each Planning Year, Cielo MD shall either: (a) approve the Preliminary Budget (in which case the Preliminary Budget shall become the Final Budget for the Budget Year); or (b) propose in writing to Stone Creek MD additions to and/or deletions from the Preliminary Budget. Cielo MD may propose additions to and/or deletions from only those portions of the Preliminary Budget which directly obligate Cielo MD to appropriate and expend funds during the Budget Year. Cielo MD shall have no right or authority to object to or propose additions to and/or deletions from any other portions of the Preliminary Budget.

(d) Failure to Agree. The Districts shall discuss and attempt to reach an agreement with respect to the Preliminary Budget. In the event the Districts cannot agree on the Preliminary Budget, mediation shall be initiated to resolve the disagreement with the costs of such mediation being split evenly among the Districts.

4. Financing Conditions. Stone Creek MD’s obligation to fund the Stone Creek MD Allocation of the Clubhouse Construction Costs and the Clubhouse O&M Costs, and Cielo MD’s obligation to fund the Cielo MD Allocation of the Clubhouse O&M Costs, is hereby conditioned upon prior satisfaction of the following (collectively, the “**Financing Conditions**”):

(a) Clubhouse Construction Costs.

(i) Stone Creek MD and the Stone Creek Developer agree until such time as Stone Creek MD has sufficient funds to reimburse Stone Creek Developer for the Clubhouse Construction Costs as provided for in the Stone Creek FAA, funding for the Clubhouse Construction Costs will be provided by, or caused to be provided by, the Stone Creek Developer pursuant to the Stone Creek FAA.

(b) Clubhouse O&M Costs.

(i) The Districts and the Developers agree until such time as revenue received from the imposition of their respective general fund *ad valorem* property taxes upon the Stone Creek Ranch Property and the Cielo Property is sufficient to fund the Clubhouse O&M Costs, funding for the Clubhouse O&M Costs will be provided by the respective Developers pursuant to the Stone Creek OFAs and the Cielo OFA, respectively.

5. Failure to Provide Funds/Termination. In the event that one of the Districts fails to either appropriate funds, or fund its respective obligations hereunder by the date prescribed, the respective Developer of such District shall fund such obligations. .

6. Default and Remedies. Upon any default by either District herein, the non-defaulting District shall be entitled to exercise all remedies available at law or in equity,

including specific performance and/or monetary damages. 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 be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

7. Assignability. This Agreement may not be assigned or delegated without the prior written consent of the Parties.

8. Relationship of the Districts. By executing this Agreement, neither District shall be deemed to assume any liability for intentional or negligent acts, errors, or omissions of the other District or any officer or employee thereof. No agent, employee or volunteer of either District hereto shall be deemed an agent, employee or volunteer of the other District under this Agreement. Nothing herein is intended to or waives either District's immunities at law, including provisions of the Governmental Immunity Act.

9. No Third Party Beneficiaries. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does either District waive its immunities at law, including provisions of the Governmental Immunity Act.

10. Nonwaiver of Rights. No waiver of default by either District of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other District shall be construed or shall operate as a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other District.

11. Severability. The Districts understand and agree that if any covenant, condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, or otherwise appears to be invalid, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either of the Districts in its respective rights and obligations contained in the remaining valid covenants, conditions and provisions of this Agreement.

12. Integration. This Agreement is intended as the complete integration of all understandings between the Districts and constitutes the entire agreement between the Districts with respect to the subject matter herein. No prior or contemporaneous addition, deletion or other amendment to this Agreement shall have any force of effect, unless embodied herein in writing.

13. Modification. Modification or waiver of this Agreement or any covenant, condition or provisions herein shall not be valid unless in writing and duly executed by the Parties.

14. Captions. The headings, sections and paragraphs herein are included only for convenience and reference. If any conflict between any heading and the text of this Agreement exists, the text shall control.

15. Indemnification. To the extent allowable by state law, the Districts agree that each shall indemnify the other, their officers, employees and agents from and against any claim, damages, losses or expenses which are the result of negligent acts or omissions from their respective officers, employees or agents in connection with this Agreement.

16. Governing Law and Jurisdiction. This Agreement and all disputes arising hereunder shall be governed by the internal laws of the State of Colorado, and the Districts agree that the venue and jurisdiction over any claim arising from this Agreement shall be exclusive to the District Court in and for the County of Douglas, Colorado. In the event of litigation, the prevailing District shall be entitled to its attorneys' fees and costs.

17. Term; Repose. The term of this Agreement shall begin as of the date first written above and shall continue through the full performance of the Parties obligations provided herein unless terminated pursuant to the terms of Section 2, above or unless terminated in writing by the Parties.

18. Notice. All notices, demands, requests or other communications to be sent by one District 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 Stone Creek MD: Stone Creek Metropolitan District
Attn: Lisa Johnson
141 Union Blvd. #150
Lakewood, Colorado 80228
Phone: 303-987-0835
Email: ljohnson@sdmsi.com

With a Copy To: McGeedy Becher P.C.
Attn: Elisabeth A. Cortese
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203-1254
Phone: 303-592-4380
Email: ecortese@specialdistrictlaw.com

To Cielo MD: Cielo Metropolitan District
Attn: Lisa Johnson
141 Union Blvd. #150
Lakewood, Colorado 80228
Phone: 303-987-0835
Email: ljohnson@sdmsi.com

With a Copy To: McGeady Becher P.C.
Attn: Elisabeth A. Cortese
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203-1254
Phone: 303-592-4380
Email: ecortese@specialdistrictlaw.com

To Stone Creek
Developer: Choke Cherry Investors, LLC
Attn: Michael Sanders
6700 East Scott Avenue
Parker, Colorado 80134
Phone: 310-460-6324
Email: landdad@gmail.com

With a Copy To: Kristin Schelwat
Schelwat Law, LLC
16350 E. Arapahoe Road, Suite 108-102
Foxfield, Colorado 80016
Phone: (720) 252-6764
Email: kschelwat@schelwatlaw.com

To Cielo Developer: Forestar (USA) Real Estate Group Inc.
Attention: Tom Burleson
6300 Bee Cave Road, Building Two, Suite 500
Austin, Texas 78746
Phone: 214-697-1860
Email: tomburleson@forestargroup.com

With a copy to: Forestar Group Inc.
Attn: Matt Stark
6300 Bee Cave Road, Building Two, Suite 500
Austin, Texas 78746
Phone: 512-433-5212
Email: MattStark@forestargroup.com

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with United Parcel Service 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 Districts shall have the right from time to time to change its address or contact information.

19. 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.

IN WITNESS WHEREOF, the parties have executed this **CLUBHOUSE FUNDING, CONSTRUCTION, AND OPERATIONS AGREEMENT** as of the date first set forth above.

STONE CREEK MD:

STONE CREEK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

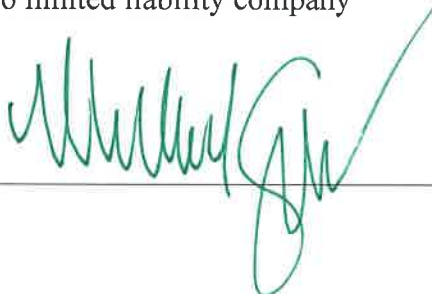
By:  _____
President

Attest:

 _____
Secretary

STONE CREEK DEVELOPER:

CHOKE CHERRY INVESTORS, LLC, a Colorado limited liability company

By:  _____

CIELO MD:

CIELO METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: Matthew Napier
President

Attest:

J. Johnson
Secretary

CIELO DEVELOPER:

FORESTAR (USA) REAL ESTATE GROUP INC., a Delaware corporation

By: John Maberry
Name: John Maberry
Its: Vice President

EXHIBIT A

DESCRIPTION OF IMPROVEMENTS

- Furnished clubhouse and pool;
- Gazebo; and
- Playground equipment.