


**M E M O R A N D U M**

**TO:** Honorable Chairman and Members of the Board of County Commissioners

**FROM:** Donald J. Davis, County Manager 

**RE:** Green Tree Metropolitan Districts 1 and 2 Settlement Agreement

**DATE:** September 17, 2019

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**Staff Recommendation:** That the Board of County Commissioners approve the Settlement Agreement by and between Green Tree Metropolitan Districts 1 and 2, Three Dinos, LLC, Solterra, LLC, and Jefferson County relating to certain reimbursement obligations of the Green Tree Metropolitan Districts.

**Resolution No. CC 19-323**

**Background:** The Green Tree Metropolitan Districts were formed in part to finance and construct the C-470 and Alameda interchange. Green Tree entered into reimbursement agreements with Carma Lakewood, LLC (the predecessor in interest to Solterra, LLC), the City of Lakewood and the County in which each entity advanced funds for the construction of the public improvements which have been built. The terms for reimbursement of the advances by Solterra and the County vary based on each party's agreement. The existing reimbursement obligation to the County is not due until December 31, 2021; however, Solterra commenced litigation to pursue reimbursement from Green Tree under their agreement and the County and the City of Lakewood were included in the action as Green Tree has an obligation to reimburse each of the parties. The form of the proposed Settlement Agreement was determined through a mediation process.

**Fiscal Impact:** The settlement agreement contemplates a 15 mill ad valorem property tax imposed on property within the Green Tree Metropolitan District to fund the reimbursement obligations over 45 years. The estimated reimbursement to the County is approximately \$6.9 million.

**Continued from March 26, 2019 Business Meeting Regular Agenda**

**Originator:** Eric Butler, County Attorney's Office

**Distribution:** Jeanie Rossillon, Director of Development and Transportation, Eric Butler, County Attorney's Office, Kimberly Sorrells, County Attorney

Commissioner Tighe moved that the following Resolution be adopted:

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF THE COUNTY OF JEFFERSON

STATE OF COLORADO

RESOLUTION NO. CC19-323

RE: Board of County Commissioners - Settlement Agreement - Green Tree Metropolitan Districts 1 and 2

Resolved that the Board of County Commissioners hereby approves the Settlement Agreement by and between Green Tree Metropolitan Districts 1 and 2, Three Dinos, LLC, Solterra, LLC, and Jefferson County relating to certain reimbursement obligations of the Green Tree Metropolitan Districts.

Commissioner Dahlkemper seconded the adoption of the foregoing Resolution. The roll having been called, the vote was as follows:

|                                    |     |
|------------------------------------|-----|
| Commissioner Casey Tighe           | Aye |
| Commissioner Lesley Dahlkemper     | Aye |
| Commissioner Libby Szabo, Chairman | Aye |

The Resolution was adopted by unanimous vote of the Board of County Commissioners of the County of Jefferson, State of Colorado.

Dated: September 17, 2019

## SETTLEMENT AGREEMENT

This Settlement Agreement (“**Agreement**”) is entered into this 17 day of SEPTEMBER, 2019 (“**Effective Date**”) among **Green Tree Metropolitan District No. 1** and **Green Tree Metropolitan District No. 2**, both quasi-municipal corporations and political subdivisions of the State of Colorado (together “**Green Tree**”); **Three Dinos, LLC**, a Colorado limited liability company (“**Three Dinos**”); **Solterra, LLC**, a Colorado limited liability company (“**Solterra**”); and **County of Jefferson, Colorado**, a county and political subdivision of the State of Colorado (the “**County**”). Green Tree, Three Dinos, Solterra, and the County may each be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. Green Tree was organized, in part, to finance and construct public infrastructure (the “**Infrastructure**”), generally described in Exhibit D to the Consolidated Service Plan for Green Tree Metropolitan District No. 1 and Green Tree Metropolitan District No. 2 which is attached hereto as **Exhibit A** (the “**Service Plan**”).

1. Green Tree’s current boundary is shown on **Exhibit B** (the “**Green Tree Boundary**”).

B. To pay for construction of the C-470 Interchange, which was part of the Infrastructure, Green Tree Metropolitan District No. 1 entered into:

1. A Funding and Reimbursement Agreement dated November 15, 2007 with Carma Lakewood, LLC, (the predecessor in interest to Solterra) under which Solterra claims approximately \$15,885,667 is due and owing for principal and accrued interest (the “**Solterra Agreement**”);
2. An Intergovernmental Agreement Regarding Partial Funding for the C-470/Alameda Interchange with the City of Lakewood, Colorado, a home rule municipal corporation (the “**City**”) dated October 22, 2007 under which the City claims approximately \$5,300,000 for principal and accrued interest (the “**City Agreement**”); and,
3. The Intergovernmental Agreement Regarding Reimbursement of Advances for Construction Funding for the C-470/Alameda Interchange with the County dated October 2, 2007, a First Amendment dated June 9, 2009 and a Second Amendment dated January 18, 2011 under which the County claims approximately \$10,940,600 for principal and accrued interest (the “**County Agreement**”).

(collectively, the “**Obligations**”).

C. Three Dinos owns property within the Green Tree Boundary. Three Dinos is not a party to the Obligations.

D. Construction of the C-470 Interchange as contemplated by the Solterra Agreement, the City Agreement, and the County Agreement has been completed.

E. A dispute arose concerning the Obligations and all parties brought claims or counterclaims in Jefferson County District Court Case No. 2017CV032042 (the "Case"). The Parties have determined to resolve their claims and all claims that could have been asserted in the Case in the manner set forth in this Agreement. The City had the opportunity to participate fully in this settlement, but elected not to participate and to not settle its claims.

## AGREEMENT

I. **Green Tree Payment Obligation.** Green Tree agrees to issue promissory notes evidencing an obligation to pay the following principal amounts on the terms set forth in this Agreement: \$15,885,667 to Solterra (or its designee), and \$10,940,600 to the County (collectively, the "Payment Obligations").

- A. **Discharge Date:** The Payment Obligations will be for a term of 45 years which term shall commence on January 1 of the year following the first building permit issued for permanent improvements to real property located within the Green Tree Boundary, or, January 1, 2025, whichever occurs first, and shall expire on the date that is 45 years later (the "**Discharge Date**"). On the Discharge Date, the Payment Obligations, including any remaining principal and accrued interest, shall be discharged and forgiven in their entirety and written evidence of the cancellation of the Payment Obligations shall be provided to Green Tree by Solterra and the County upon request.
- B. **Interest:** Unpaid principal on the Payment Obligations will accrue simple interest at the rate of:
1. 0% until expiration of the first 3 years of the 45-year term; and,
  2. Thereafter until the Discharge Date at a rate equal to the MMD Rate as defined below, or at the interest rate of any subsequently issued debt by Green Tree, whichever interest rate is higher.
  3. For purposes of this Agreement, the MMD Rate shall be set annually using the 30-year AAA Municipal Market Data Index as of March 31 of each year (or the first business day after March 31), plus 2%, and shall apply for 12 months without further adjustment.
- C. **Pledged Revenue:** Beginning the tax year in which the first building permit is issued for permanent improvements to real property located within the Green Tree Boundary or January 1, 2025, whichever occurs first, Green

Tree and specifically Green Tree Metropolitan District No. 2, as the Financing District under the Service Plan, agrees to impose a 15-mill *ad valorem* property tax on all taxable property within the Green Tree Boundary for the 45-year term (“**Pledged Revenue**”). Green Tree, and specifically Green Tree Metropolitan District No. 2, as the Financing District under the Service Plan, irrevocably pledges 15 mills for payment of principal and interest on the Payment Obligations and shall adopt a legislative measure in compliance with Article 11, Section 6 of the Colorado Constitution providing for the levy and payment of the Pledged Revenue as set forth in this Agreement (the “**Authorizing Resolutions**”) and deliver to Solterra and the County notes evidencing the respective Payment Obligations with the interest terms set forth herein.

- D. Assignment of Payment Obligations: Solterra and the County shall each have the right to assign the promissory notes and the right to payment of their respective promissory notes evidencing the Payment Obligations.
- E. PILOT: Three Dinos shall record against the property owned by Three Dinos within the Green Tree Boundary (the “**Subject Property**”) a payment in lieu of taxes covenant that provides for the payment in lieu of taxes, by any and all tax-exempt entities that subsequently own or occupy the Subject Property, of all property taxes that would otherwise be payable to Green Tree from the mill levies required to be imposed to produce Pledged Revenue (the “**Covenant**”). The Covenant shall expire on the Discharge Date, however, the Covenant shall expire immediately upon the following conditions: if (a) 10 years from the execution of this Agreement none of the Subject Property has been developed for a commercial use or (b) Green Tree and/or Three Dinos, as applicable, is unable to secure sewer service or to obtain other necessary utility services or governmental approval required for commercial development of the Subject Property (including without limitation any approvals required from Urban Drainage) within 7 years of the execution of this Agreement. The Covenant shall not be recorded against the 3.13-acre property south of Alameda Parkway and bounded on the East by Rooney Gulch to be conveyed to the County for as long as the County owns such property. Three Dinos will deliver to Kutak Rock LLP, simultaneously with the closing on the issuance of the promissory notes, an executed original of the Covenant to be recorded, in a form mutually acceptable to Solterra, Three Dinos and Green Tree. Kutak Rock LLP shall hold the Covenant in escrow and shall record the Covenant against the Subject Property only upon dismissal of the Lawsuit (defined below). Simultaneous with Three Dinos’ delivery of the executed original Covenant to Kutak Rock LLP, all Parties shall deliver an executed original of the Notice of Stipulated Dismissal With Prejudice (defined below) to Seter & Vander Wall, P.C., which shall hold such notice in escrow and file it with the Court upon adoption of the Authorizing Resolutions, delivery of the promissory notes and closing of the transaction by Green Tree. The foregoing notwithstanding, nothing in this Agreement shall otherwise affect

any agricultural designation that may be applicable to the Subject Property; nor shall the Covenant apply to any portion of the Subject Property that may be subsequently acquired by any tax-exempt entity(ies) pursuant to a taking under power of eminent domain or by condemnation or similar proceeding. For clarity, neither this Section I(E) nor any other provision of this Agreement is intended to, nor shall, make Three Dinos a party to any of the Obligations or impose any liability on Three Dinos with respect to the Payment Obligations or any other obligations of Green Tree under this Agreement and the other Documentation (as hereinafter defined), except that Three Dinos (as would be applicable to any other owner of taxable property within the Green Tree Boundary) shall, during the period that Three Dinos has title ownership to taxable property within the Green Tree Boundary (the "applicable period"), be liable for payment of the 15-mill ad valorem property tax described in this Agreement to the extent assessed on such taxable property owned by Three Dinos within the Green Tree Boundary during the applicable period.

**II. Green Tree Payments.** Green Tree will cause bi-annual payments of the Pledged Revenue to be made on the Payment Obligations at the following percentages: 63.7% to Solterra and 36.3% to the County. If requested by Solterra and the County, Green Tree agrees to enter into a trust indenture with a nationally recognized trustee (to be selected by Solterra and agreed to by the County). The trust indenture will govern the deposit of Pledged Revenue with the trustee and the payment of Pledged Revenue. Payments of the Pledged Revenue will be made to the trustee no later than March 31 and September 30 of each year of the 45-year term. Trustee fees will be paid by Solterra and the County on the same percentages referenced above, or, with Pledged Revenue, if available. Notwithstanding the percentages described above, the Pledged Revenue shall first be paid to Solterra until the \$40,000.00 Solterra payment set forth in Section IV is repaid.

**III. Additional Documentation and Transaction Costs.**

A. Green Tree agrees to adopt the Authorizing Resolutions and deliver the promissory notes for the respective Payment Obligations within sixty (60) days of the Effective Date.

B. The Parties acknowledge that additional documentation required to carry out the terms of this Agreement could include, but not necessarily be limited to, the Authorizing Resolutions, the promissory notes, the Covenant, and a trust indenture to govern the deposit and payment of Pledged Revenue (the "**Documentation**"). The Parties acknowledge that the Documentation could modify terms of this Agreement, and in that event, the terms of the Documentation shall control upon approval by all Parties.

C. The Parties agree that Solterra will be responsible for all costs associated with drafting the Documentation, except drafting and recording the documentation related to the Covenant will be the responsibility of Green Tree. None of the Parties shall be responsible for any costs of any other Party in reviewing or approving the Documentation, including the Covenant.

**IV. Solterra Payment.** Within 30 days of the Effective Date, Solterra will pay to Green Tree Metropolitan District No. 1 a one-time payment of \$40,000.00.

**V. Representations and Warranties.** Green Tree makes the following representations and warranties:

A. Green Tree has the requisite authority under Article X, Section 20 of the Colorado Constitution (“**TABOR**”) to adopt the Authorizing Resolutions and issue the promissory notes.

B. The Service Plan does not prevent Green Tree from adopting the Authorizing Resolutions and issuing the promissory notes, and adopting the Authorizing Resolutions and issuance of the promissory notes will not constitute a material modification to or departure from the Service Plan. The County agrees that the above actions do not constitute a material modification of the Service Plan.

C. All property located within the Green Tree Boundary is located in unincorporated Jefferson County, and thus, under the Service Plan and the County’s express authorization, Green Tree is entitled to impose a Maximum Mill Levy of 50 mills on such property as authorized in the Districts’ Consolidated Service Plan. The 15-mill *ad valorem* property tax to be imposed pursuant to this Agreement is included within this previously authorized Maximum Mill Levy of 50 mills and is not in addition to that Maximum Mill Levy. Taxable property located within the Green Tree Boundary is subject to the 15-mill levy described herein.

D. Green Tree will not take any action to exclude property currently within the Green Tree Boundary prior to adopting the Authorizing Resolutions, issuing the promissory notes and closing the transaction, provided that any property excluded thereafter shall be subject to C.R.S. § 32-1-503 and shall remain subject to the 15-mill levy described herein until the Discharge Date.

E. Green Tree will not take any action to cause property currently within the Green Tree Boundary to be annexed into the City and will voice opposition to any attempted annexation of such property into the City, unless the annexed property remains subject to the 15-mill levy outlined in Section I(C) herein.

F. Green Tree will make good faith and reasonable efforts to oppose any urban renewal efforts that would affect property within the Green Tree Boundary.

G. Green Tree has not and will not impose any *ad valorem* property tax mill levy that will prevent it from levying taxes outlined in Section I(C).

H. Amended Parcel One and Amended Parcel Four within the Green Tree Boundary, as identified in Exhibit B, are currently under contract for sale to a third party for development into an industrial park. A pro forma for such development has been

prepared by Anderson Analytics located in Colorado Springs, Colorado, and a true and correct copy of the pro forma is attached hereto as **Exhibit C**.

**VI. Dismissal, Waiver and Release.**

A. Dismissal of Suit: Upon adoption of the Authorizing Resolutions and delivery of the promissory notes evidencing the Payment Obligations, the Parties will file a Notice of Stipulated Dismissal With Prejudice in *Solterra, LLC v. Green Tree Metropolitan District No. 1*, Civil Action No. 2017CV032042 in the District Court, Jefferson County, State of Colorado (the "**Lawsuit**").

B. Waiver and Release: Upon adoption of the Authorizing Resolutions and delivery of the promissory notes evidencing the Payment Obligations, the Parties for themselves and their officers, directors, members, managers, governors, employees, shareholders, attorneys, attorney-in-fact, parents, subsidiaries, affiliates, affiliated companies, agents, heirs, successors, assigns and personal representatives, hereby fully and finally release and forever discharge each other Party, its officers, directors, members, managers, governors, employees, shareholders, attorneys, attorney-in-fact, parents, subsidiaries, affiliates, affiliated companies, agents, heirs, successors, assigns and personal representatives, from any and all claims, debts, liabilities, demands, obligations, damages, losses, causes of action, costs, expenses or attorneys' fees, of whatsoever kind and character, known or unknown, from the beginning of time to the date of this Agreement's Effective Date that were asserted or which could have been asserted in the Lawsuit and which: (1) arise from the funding and construction of the Infrastructure; (2) arise from the Service Plan provisions concerning the Infrastructure, (3) arise from or are related to the Obligations, including the City Agreement.

**VII. Miscellaneous.**

A. Right to Enforce this Agreement. Notwithstanding Section VI or any other provision of this Agreement, the Parties shall have the right to enforce this Agreement through any available remedy.

B. Attorneys' Fees and Costs. In the event any Party files any motion or initiates any lawsuit to enforce the terms of this Agreement, the prevailing party shall be awarded its reasonable attorneys' fees and costs incurred in such a proceeding.

C. No Assignment of Claims. Each of the Parties represents and warrants that it has not assigned, transferred, or otherwise disposed of any of the claims being released by Section VI.

D. Knowledge and Review of Agreement. The Parties warrant and represent that this Agreement is executed voluntarily and with full knowledge of the consequences and implications of their obligations contained herein, and that they have carefully and thoroughly reviewed this Agreement in its entirety.



E. Additional Documents. The Parties agree to execute any additional documents and to take any additional actions that may be reasonably necessary to implement this Agreement.

F. Representation by Counsel. The Parties warrant and represent that they have been represented by counsel of their choice throughout the negotiations, which preceded the execution of this Agreement, and in connection with the preparation and execution of this Agreement, and that they have carefully and thoroughly reviewed this Agreement in its entirety with such counsel.

G. Entire Agreement. This Agreement, the promissory notes, and other Documentation necessary to effectuate this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior understandings and agreements among the Parties with respect to the subject matter hereof. This Agreement may not be modified except in a writing signed by all Parties hereto.

H. Severability. The illegality, unenforceability or over breadth of any provision of this Agreement shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement.

I. Governing Law and Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Colorado without regard to any state's conflict of law provisions.

J. Successors. This Agreement shall be binding upon, and inure to the benefit of, the Parties and the Parties' respective successors and assigns.

K. No Reliance. The Parties represent that, in entering into this Agreement, they did not rely, and have not relied, upon any representation or statement not set forth expressly herein with regard to the subject matter, the basis for or the effect of this Agreement or otherwise.

L. Counterparts. This Agreement may be executed in counterparts and sent electronically by email, facsimile, or other electronic transmission. Each counterpart, including any electronically transmitted signature, shall constitute an original.

M. Authority to Sign. The person executing this Agreement on behalf of each Party expressly represents and warrants that he/she has: (a) full legal capacity to enter into this Agreement; (b) carefully read and fully understands this Agreement; (c) had a full opportunity to review this Agreement with counsel; and (d) executed this Agreement voluntarily, without duress, coercion or undue influence.

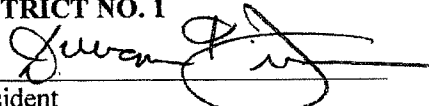
N. Headings. The headings contained herein are for convenience of reference only and are not intended to define, limit, expand or describe the scope or intent of any provision of this Agreement.

O. Recitals. The Recitals are material to this Agreement and are to be construed with the other terms and conditions of the Agreement.

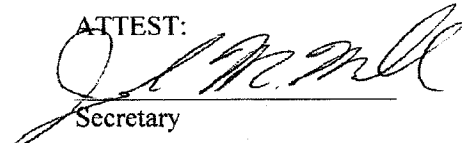
[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the date first written above.

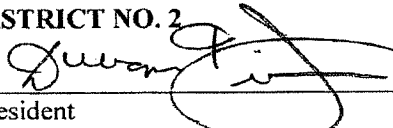
**GREEN TREE METROPOLITAN  
DISTRICT NO. 1**

  
\_\_\_\_\_  
President

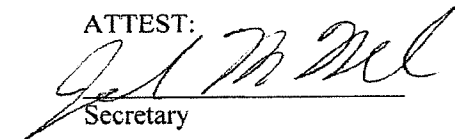
ATTEST:

  
\_\_\_\_\_  
Secretary

**GREEN TREE METROPOLITAN  
DISTRICT NO. 2**

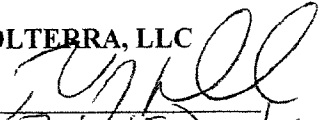
  
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President

ATTEST:

  
\_\_\_\_\_  
Secretary

[Signature Page to Settlement Agreement between Green Tree Metropolitan District No. 1;  
Green Tree Metropolitan District No. 2; Solterra, LLC; Three Dinos, LLC; and County of  
Jefferson, Colorado]

SOLTERRA, LLC

  
By: *Richard S. Denger*  
Its: *President, Colorado*

SOLTERRA, LLC

  
By: *Ashley Tammelli*  
Its: *CFO*