

**Resolution No. 2021-08-5**

**AMENDED AND RESTATED  
RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF THE  
MURPHY CREEK METROPOLITAN DISTRICT NO. 5**

**CONCERNING THE IMPOSITION OF A CAPITAL FACILITIES FEE**

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WHEREAS, the Murphy Creek Metropolitan District No. 5 (the “**District**”) was formed pursuant to §§ 32-1-101, *et seq.*, C.R.S., as amended (the “**Special District Act**”), by order of the District Court for Arapahoe County, Colorado, and after approval of the District’s eligible electors at an election; and

WHEREAS, pursuant to § 32-1-1001(1)(h), C.R.S., the Board of Directors of the District (the “**Board**”) shall have the management, control and supervision of all the business and affairs of the District; and

WHEREAS, the Board has determined it to be in the best interests of the District, and the property owners, taxpayers, and residents of the District, to acquire, construct, operate and maintain certain amenities and facilities benefitting property and inhabitants within the District, which amenities and facilities generally include park and recreation and landscaping improvements, facilities, appurtenances and rights-of-way (collectively, the “**Facilities**”); and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., the District is authorized to fix and impose fees, rates, tolls, penalties and charges for services or facilities furnished by the District which, until such fees, rates, tolls, penalties and charges are paid, shall constitute a perpetual lien on and against the property served; and

WHEREAS, the District incurs certain direct and indirect costs associated with the acquisition, construction, installation, repair, replacement, improvement, reconstruction operation and maintenance of the Facilities, as necessary, inclusive of the costs of utilities and capital replacement costs (collectively, the “**Facility Costs**”) in order that the Facilities may be properly provided and maintained; and

WHEREAS, the establishment of a fair and equitable fee (the “**Capital Facilities Fee**”) to provide a source of funding to pay for the initial capital direct and indirect costs associated with the construction, installation and acquisition of the Facilities (the “**Capital Facilities Costs**”), which Capital Facilities Costs are generally attributable to each Lot and Commercial Lot (as those terms are defined below), is necessary to provide for the common good and for the prosperity and general welfare of the District and its inhabitants; and

WHEREAS, on November 2, 2018, the Board, along with the boards of directors of the Murphy Creek Metropolitan District Nos. 1, 2, and 4, jointly adopted the Joint Resolution Concerning the Imposition of a Capital Facilities Fee (“**Prior Policy**”), and the boards of each district desire to adopt individual resolutions to amend and restate the Prior Policy in its entirety.

NOW, THEREFORE, be it resolved by the Board as follows:

1. **DEFINITIONS.** Except as otherwise expressly provided or where the context indicates otherwise, the following capitalized terms shall have the respective meanings set forth below:

“**Apartment or Other Multi-Family Residential Dwelling Unit Not Otherwise Enumerated**” means all platted property for which fifteen (15) or more dwelling units are planned per acre.

“**Apartment Unit**” means a unit within an apartment building which unit is held for lease or rent for residential occupancy and for which a final certificate of occupancy has been issued.

“**Commercial Lot**” means each Lot, regardless of the number of Commercial Units thereon, within the District Boundaries that is used and/or zoned for general commercial, industrial, office, retail or other non-residential uses.

“**Commercial Unit**” means each office space, unit, building or other structure within the District Boundaries that is used and/or zoned for general commercial, industrial, office, retail, or other non-residential uses.

“**District Boundaries**” means the legal boundaries of the District, as the same are established and amended from time to time pursuant to §§32-1-101, *et seq.*, C.R.S., as more particularly set forth in the map and legal description attached hereto as **Exhibit B** and incorporated herein by this reference. The District Boundaries set forth in Exhibit B reflect the District Boundaries as of the date of this Resolution and are subject to change as inclusions and/or exclusions are processed in accordance with Colorado law. Any property included into the District Boundaries shall automatically become subject to this Resolution.

“**Due Date**” means the date by which the Capital Facilities Fee is due, which Due Date is reflected on the Schedule of Fees.

“**End User**” shall have the same definition as provided for in the Service Plan.

“**Fee Schedule**” or “**Schedule of Fees**” means the schedule of fees set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, until and unless otherwise amended and/or repealed.

“**Lot**” means each parcel of land established by a recorded final subdivision plat and which is located within the District Boundaries.

“**Operations Fee**” means that certain Operations Fee as defined in Resolution No. 5015-11-05 adopted by the Board on November 18, 2015 and recorded in the real property records of the Arapahoe County Clerk and Recorder’s Office on January 28, 2016 at Reception No. D6009206.

“**Patio Home**” means a cluster housing, the plat for which details between six (6) to ten (10) dwelling units per acre.

“**Residential Unit**” means each residential dwelling unit (including, without limitation, condominiums, townhomes, and any other attached dwelling unit and detached single family dwelling units) located within the District Boundaries which has been Transferred to an End User.

“**Service Plan**” means that Amended and Restated Consolidated Service Plan for Murphy Creek Metropolitan District Nos. 1-4 and Service Plan for Murphy Creek Metropolitan District No. 5, approved by the City of Aurora on August 8, 2016, as may be amended from time to time.

“**Transfer**” or “**Transferred**” shall include a sale, conveyance or transfer by deed, instrument, writing, lease or any other documents or otherwise by which real property is sold, granted, let, assigned, transferred, exchanged or otherwise vested in a tenant, tenants, purchaser or purchasers.

“**Townhome**” means those dwelling units platted for between ten (10) to fifteen (15) units per acre.

“**Type I**” means a Residential Unit, not including a Patio Home, the plat for which details less than six (6) dwelling units per acre.

“**Type II**” means a Residential Unit, not including a Patio Home, the plat for which details between seven (7) and fifteen (15) Residential Units per acre.

“**Vacant Lot**” means each parcel of land within the District established by a recorded final subdivision plat, but specifically excluding any parcel upon which one or more Residential Units, Commercial Units or Apartment Units is situated and specifically excluding any parcel owned by the District.

2. OPERATIONS FEE. Any Operations Fee previously imposed, to the extent outstanding and unpaid, shall remain in effect until fully paid and shall not be eliminated hereby.

3. CAPITAL FACILITIES FEE.

a. A one-time Capital Facilities Fee is hereby established and imposed upon each Residential Unit and each Commercial Unit within the District Boundaries.

b. The Capital Facilities Fee shall be first due and owing as of: 1) the date of Transfer to an End User; or 2) when a Residential Unit is occupied for residential use or when a Commercial Unit is occupied for commercial use, upon issuance of a building permit for any Residential Unit or Commercial Unit on a Lot, whichever shall first occur. The amount of each Capital Facilities Fee due hereunder shall be at the rate in effect at the time of payment.

c. Pursuant to Section V.A. 11 of the Service Plan, the Capital Facilities Fee shall not be imposed upon or collected from Taxable Property (as that term is defined in the Service Plan) owned or occupied by an End User.

d. The Board has determined, and does hereby determine, that the Capital Facilities Fee is reasonably related to the overall cost of providing the Facilities, and is imposed on those who are reasonably likely to benefit from or use the Facilities.

e. The revenues generated by the Capital Facilities Fee will be accounted for separately from other revenues of the District. The Capital Facilities Fee revenue will be used solely for the purpose of paying Capital Facilities Costs, and may not be used by the District to pay for general administrative costs of the District. This restriction on the use of the Capital Facilities Fee revenue shall be absolute and without qualification.

f. The Board has determined, and does hereby determine, that the Capital Facilities Fee is calculated to defray the cost of funding construction of the Facilities and reasonably distributes the burden of defraying the Capital Facilities Costs in a manner based on the benefits received by persons paying the fees and using the Facilities.

4. LATE FEES AND INTEREST. Pursuant to § 29-1-1102(3), C.R.S., any Capital Facilities Fee not paid in full within fifteen (15) days after the scheduled due date will be assessed a late fee in the amount of Fifteen Dollars (\$15.00) or up to five percent (5%) per month, or fraction thereof, not to exceed a total of twenty-five percent (25%) of the amount due. Interest will also accrue on any outstanding Capital Facilities Fee, exclusive of assessed late fees, penalties, interest and any other costs of collection, specially including, but not limited, to attorney fees, at the rate of 18% per annum, pursuant to § 29-1-1102(7), C.R.S. The District may institute such remedies and collection procedures as authorized under Colorado law, including, but not limited to, foreclosure of its perpetual lien. The defaulting property owner shall pay all fees and costs, specifically including, but not limited to, attorneys' fees and costs and costs associated with the collection of delinquent fees, incurred by the District and/or its consultants in connection with the foregoing.

5. PAYMENT. Payment for all fees, rates, tolls, penalties, charges, interest and attorney fees shall be made by check or equivalent form acceptable to the District, made payable to "Murphy Creek Metropolitan District No. 5" and sent to the address

indicated on the Fee Schedule. The District may change the payment address from time and time and such change shall not require an amendment to this Resolution.

6. PRIOR CAPITAL FACILITIES FEES. Any prior Capital Facilities Fees imposed by the District, to the extent unpaid and outstanding, including any associated late fees, interest, penalties and/or charges, shall remain in effect until fully paid and shall not be eliminated by this Resolution.

7. LIEN. The fees imposed hereunder, together with any and all late fees, interest, penalties and costs of collection, shall, until paid, constitute a statutory, perpetual lien on and against the property served, and any such lien may be foreclosed in the manner provided by the laws of the State of Colorado for the foreclosure of mechanic's liens, pursuant to § 32-1-1001(1)(j)(I), C.R.S. Said lien may be foreclosed at such time as the District, in its sole discretion, may determine. The lien shall be perpetual in nature (as defined by the laws of the State of Colorado) on the property and shall run with the land. This Resolution shall be recorded in the offices of the Clerk and Recorder of Arapahoe County, Colorado.

8. SEVERABILITY. If any portion of this Resolution is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Resolution, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Resolution a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

9. THE PROPERTY. This Resolution shall apply to all property within the District's boundaries, including, but not limited to, the property set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, and any additional property included into the District after the date of this Resolution.

10. EFFECTIVE DATE. This Resolution shall become effective August 26, 2021.

*[Remainder of Page Intentionally Left Blank. Signature Page to Follow.]*


ADOPTED THIS 26<sup>TH</sup> DAY OF AUGUST.

**MURPHY CREEK METROPOLITAN DISTRICT NO. 5**, a quasi-municipal corporation and political subdivision of the State of Colorado

*Tanya Alpert*


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Officer of the District

ATTEST:

  
\_\_\_\_\_  
Michael Alpert (Aug 27, 2021 10:57 MDT)

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

  
\_\_\_\_\_  
General Counsel to the District

*Signature Page to Amended and Restated Resolution Concerning the Imposition of Capital Facilities Fee*

**EXHIBIT A****MUPRHY CREEK METROPOLITAN DISTRICT NO. 5****Schedule of Fees****Effective January 1, 2021**

<b>Schedule of Fees</b>		
<b>Fee Type</b>	<b>Classifications</b>	<b>Rate</b>
<b>Capital Facilities Fee*</b>	Single Family Residence	\$3,875 Residential Unit
	Type I Town Home or Patio Home	75% of Single Family Residence Rate
	Type II Town Home or Patio Home	50% of Single Family Residence Rate
	Apartment or Other Multi-Family Residential Dwelling Unit Not Otherwise Enumerated	25% of Single Family Residence Rate
	Commercial	\$17,600 per acre, or portion thereof, for each Lot
*As of January 1, 2021. Amount to increase by 5% on January 1, 2022, rounded to the nearest twenty-five dollars (\$25.00), and increased by 5%, compounded, on each January 1 thereafter.		
The Due Date for each Capital Facilities Fee is: 1) the date of Transfer to an End User; or 2) when a Residential Unit is occupied for residential use or when a Commercial Unit is occupied for commercial use, whichever shall first occur.		

**PAYMENTS:** Payment for each fee shall be made payable to the Murphy Creek Metropolitan District No. 5 and sent to the following address for receipt by the Due Date:

Murphy Creek Metropolitan Districts No. 5  
 c/o Simmons & Wheeler, PC  
 304 Inverness Way South, Suite 490  
 Englewood, Colorado 80112

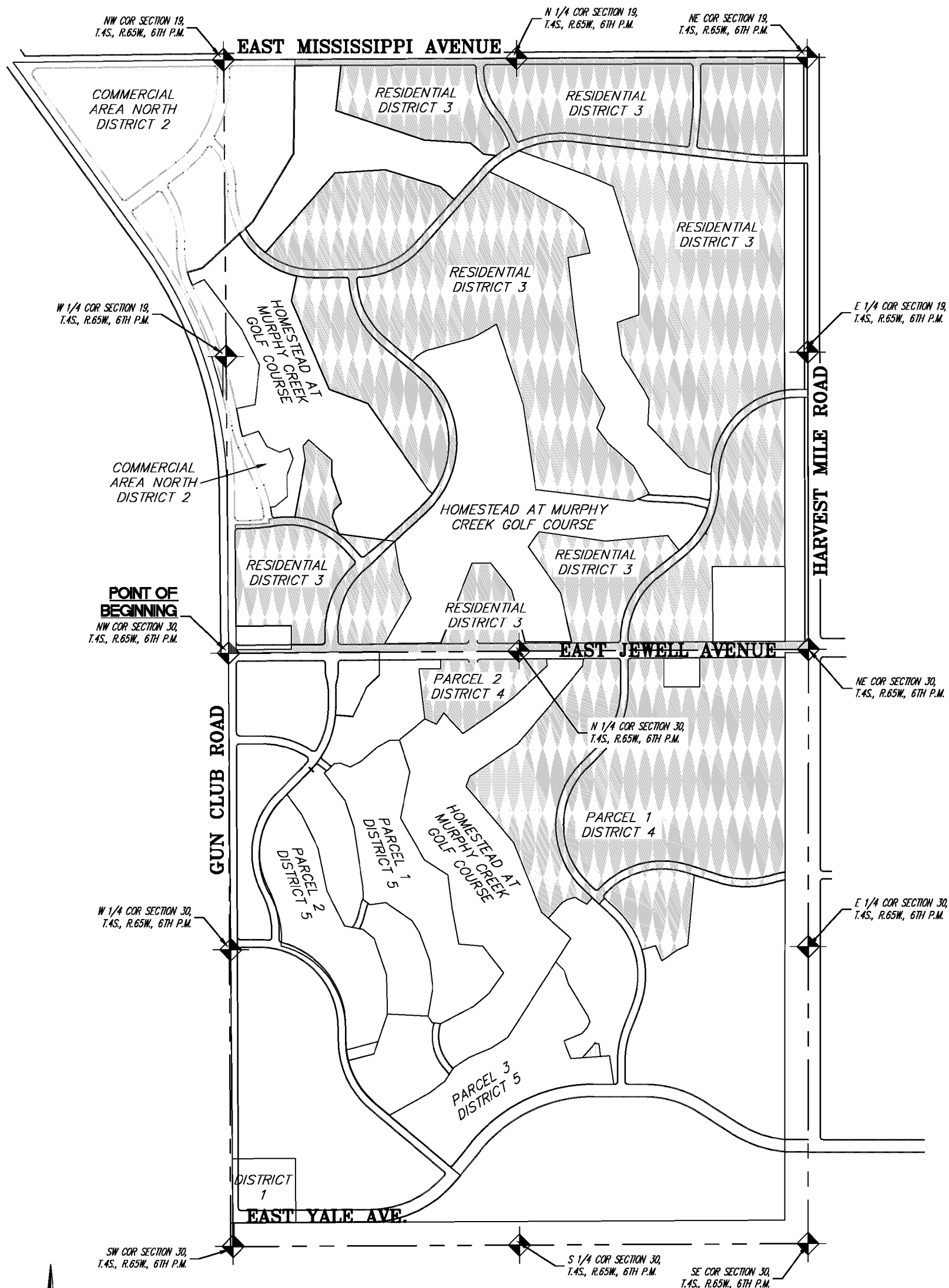
**EXHIBIT B**

**MURPHY CREEK METROPOLITAN DISTRICT NO. 5**

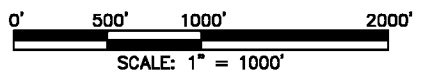
**District's Boundaries**



# MURPHY CREEK METROPOLITAN DISTRICTS OVERALL DISTRICT BOUNDARIES AURORA, COLORADO



**POINT OF BEGINNING**  
NW COR SECTION 30,  
T.4S., R.65W., 6TH P.M.



<p><b>AZTEC</b> CONSULTANTS, INC. AzTec Proj. No.: 162620-01</p>	300 East Mineral Ave., Suite 1 Littleton, Colorado 80122 Phone: (303) 713-1898 Fax: (303) 713-1897 www.aztecconsultants.com
	DATE OF PREPARATION: 9/1/2021 SCALE: X"=1000' SHEET 1 OF 1