

JOINT COMMUNITY FACILITIES AGREEMENT

among

CITY OF LAKE ELSINORE

and

ELSINORE VALLEY MUNICIPAL WATER DISTRICT

and

**THE DONALD S. CLURMAN SEPARATE PROPERTY TRUST,
THREE STRANDS PROPERTIES, LLC, a California limited liability company and
SPECTRUM COMMUNITIES, LLC, a California limited liability company**

relating to

**CITY OF LAKE ELSINORE
COMMUNITY FACILITIES DISTRICT NO. 2006-4
(ROSETTA HILLS)**

JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (the "Agreement") is dated as of the ____ day of _____, 2020, by and among the CITY OF LAKE ELSINORE, a political subdivision of the State of California (the "City"), the ELSINORE VALLEY MUNICIPAL WATER DISTRICT, a municipal corporation (the "Water District"), and THE DONALD S. CLURMAN SEPARATE PROPERTY TRUST (the "Don Clurman Property Trust"), THREE STRANDS PROPERTIES, a California limited liability company ("Three Strands Properties"), and SPECTRUM COMMUNITIES, LLC, a California limited liability company ("Spectrum Communities, and together with the Don Clurman Property Trust and Three Strands Properties, the "Owner"), and relates to the City of Lake Elsinore Community Facilities District No. 2006-4 (Rosetta Hills) (the "District") for the purpose of financing certain facilities to be owned and operated by the Water District, consisting of various connection and capacity fees (the "Fees") and water improvements (the "Improvements", and, together with the Fees, the "Water District Facilities") described in Exhibit B hereto.

R E C I T A L S:

A. The Owner is the developer of the land described in Exhibit A hereto (the "Property") which is located in the City of Lake Elsinore, County of Riverside, and consists of all the property located within the District.

B. The Owner as the developer of the Property intends to obtain, or has obtained, the necessary development approvals to construct approximately 178 residential units on the Property and to provide the required infrastructure for such units and improvements. The required infrastructure includes the Water District Facilities.

C. The City Council of the City (the "City Council") has formed the District pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code (the "Act") and has primary responsibility for administration of the District.

D. The Water District Facilities are necessary in order for Owner to develop the Property and the parties hereto find and determine that the residents residing within the boundaries of the Water District, the City and the District will be benefited by the construction and/or acquisition of the Water District Facilities and that this Agreement is beneficial to the interests of such residents.

E. The parties hereto intend to have the District assist the Owner in financing the construction and/or acquisition of the Water District Facilities by disbursing proceeds of bonds issued by the District.

F. The Water District is authorized by Section 53313.5 of the Act to assist in the financing of the acquisition and/or construction of the Water District Facilities. This Agreement constitutes a joint community facilities agreement, within the meaning of Section 53316.2 of the Act, by and among the Water District, the Owner and the City, pursuant to which the District, when formed, will be authorized to finance the construction and/or acquisition of the Water District Facilities. As authorized by Section 53316.6 of the Act, responsibility for constructing,

providing for and operating the Water District Facilities is delegated to the Water District to the extent set forth herein, to the extent proceeds of such bonds issued by the District, special taxes levied by the District, or other funds provided by Owner, are made available to the Water District for such purposes.

I. The parties hereto intend to have the District assist in financing the Water District Facilities by transferring to the Water District a portion of the bond proceeds of the District, in accordance with the terms of this Agreement and pursuant to the Act.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.

2. Sale of Bonds and Use of Proceeds. The purpose of this Agreement is to provide a mechanism by which the Owner may request the District to issue bonds to provide funds to finance the Water District Facilities. In the event that bond proceeds are not available to finance the Water District Facilities, then the Owner shall be solely responsible for financing the Water District Facilities, and the Water District shall have no obligation or responsibility for spending its own funds for the Water District Facilities, nor shall the Water District have any liability for the failure of the Owner or the District to provide financing.

The City Council of the City acting as the legislative body of the District may, in its sole discretion, finance the design, construction and acquisition of the Water District Facilities by issuing bonds (the "Bonds"). To the extent that the District determines, in its sole discretion, that Bond proceeds are available to finance the Water District Facilities, it shall reserve an amount (the "Water District Facilities Amount") for such purpose. The Water District shall have no obligation to construct or provide for any Water District Facilities until such Water District Facilities Amount is reserved, or Owner has provided alternate financing.

The Owner and the Water District acknowledge that the timing of the disbursement of the Water District Facilities Amount to the Water District shall be in all respects subject to the sole discretion and approval of the City. In no event will an act, or an omission or failure to act, by the City or the District with respect to the disbursement or nondisbursement of the Water District Facilities Amount subject the District or the City to pecuniary liability hereunder; provided, however, that Water District shall under no circumstances be obligated to spend its own funds on the Water District Facilities except as expressly provided for herein.

The Bonds shall be issued only if, in its sole discretion, the City Council determines that all requirements of state and federal law and all City policies have been satisfied or have been waived by the City. In no event shall the Owner or the Water District have a right to compel the issuance of the Bonds or the disbursement of Bond proceeds to fund the Water District Facilities Amount.

The parties hereto agree that the Water District shall have no obligation to provide water service unless and until such time all Improvements required for such purpose

have been financed, constructed, and (if applicable) accepted and acquired by the Water District, and all Fees have been financed.

3. Disbursements.

(a) Bond proceeds of the District designated for the Water District Facilities shall be held by the District in a special fund (the "Water District Facilities Account of the Acquisition and Construction Fund") which shall be invested by the City and earn and accumulate its own interest. In the event that the District has deposited Bond proceeds to the Water District Facilities Account of the Acquisition and Construction Fund to fund all or a portion of the Water District Facilities Amount, the City shall notify the Water District and the Owner, in writing, as to the amount of Bond proceeds so deposited. All interest earnings on amounts in the District's Water District Facilities Account of the Acquisition and Construction Fund shall remain in the Water District Facilities Account of the Acquisition and Construction Fund and will be available for disbursement for the Water District Facilities as described below.

(b) The Water District agrees that it will request a disbursement of Bond proceeds only for Water District Facilities that are eligible for financing under the Act. The Water District agrees that prior to requesting payment from the District it shall review and approve all costs included in its request. The Water District agrees that in processing the above disbursements with respect to Water District Facilities, it will comply with all legal requirements for the expenditure of Bond proceeds under the Act and the Internal Revenue Code of 1986 and any amendments thereto. As a condition to receiving any Bond Proceeds, the Water District agrees that it shall provide to the District, a certificate to the effect that the Water District confirms the representations contained in Section 3 hereof, the Water District agrees to comply with the provisions of the tax certificate delivered by the District in connection with the Bonds, and such other matters as the District may reasonably request upon which the District and its bond counsel may rely in connection with the issuance of such Bonds and their conclusion that interest on such Bonds is not included in gross income for federal income tax purposes.

(c) The Water District agrees to maintain adequate internal controls over its payment function and to maintain accounting records in accordance with generally accepted accounting procedures. The Water District will, upon request, provide to the District and the City its annual financial report certified by an independent certified public accountant and any other documents deemed necessary by the District and the City for purposes of calculating the District's arbitrage rebate obligations. The District and the City shall have the right to conduct their own audit of the Water District's records related to the expenditure of the Water District Facilities Amount at reasonable times during normal business hours.

(d) The Water District shall submit a request for payment along with adequate supporting documentation to the District which shall be in the form attached hereto as Exhibit C, which shall be signed by the Director of Strategic Programs, his or her or written designee, and which shall be for the exact amount to be reimbursed to the Water District, which costs shall in no event exceed the amount remaining on deposit in the Water District Facilities Account of the Acquisition and Construction Fund. Upon receipt of an approved payment request completed in accordance with the terms of this Agreement, the City shall wire transfer such portion of requested funds as are then available for release pursuant to the documents pursuant to which the Bonds are issued to the Water District's bank account, as directed by the Water District. Owner shall be solely responsible for any shortfall or delay in reimbursing the Water District.

(e) If five (5) years following the issuance of the Bonds, 85% or more of the amount deposited into the Water District Facilities Account of the Acquisition and Construction Fund from proceeds of such Bonds have not been expended for federal tax law purposes, the District may in its sole discretion transfer such funds to the City Facilities Account of the Acquisition and Construction Fund to be used to pay for the costs of eligible public facilities or to the redemption fund to redeem Bonds; provided, however that such funds may be retained in the Water District Facilities Account of the Acquisition and Construction Fund beyond such five year period upon the written request of the Water District, and delivery by the Water District of an opinion of bond counsel that such extension will not affect the exclusion from gross income of interest on such Bonds issued on a tax-exempt basis.

4. Construction and Ownership of Facilities. The Water District will complete the design of the Water District Facilities and the plans and specifications for construction of the Water District Facilities and will be responsible for constructing and inspecting the Water District Facilities. The Water District covenants and agrees that with respect to the Water District Facilities it will comply with all statutory provisions applicable to the design and construction of public works projects. The Water District Facilities shall be and remain the property of the Water District.

5. Indemnification. The City shall assume the defense of, indemnify and save harmless, the Water District, its officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of the City with respect to this Agreement and the issuance of the Bonds. No provision of this Agreement shall in any way limit the extent of the City's responsibility for payment of damages resulting from the operations of the City and its contractors; provided, however, that the City shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their agents or employees. The Water District shall assume the defense of, indemnify and save harmless, the City, its officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of the Water District with respect to this Agreement, and the design, engineering and construction of the Water District Facilities. No provision of this Agreement shall in any way limit the extent of the Water District's responsibility for payment of damages resulting from the operations of the Water District and its contractors; provided, however, that the Water District shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their agents or employees. Each of the Donald Clurman Property Trust, Three Strands Properties, and Spectrum Communities shall assume the defense of, indemnify and save harmless, the Water District and the City, each of their officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of any of the Donald Clurman Property Trust, Three Strands Properties or Spectrum Communities, with respect to this Agreement, and the design, engineering and construction of the Water District Facilities. No provision of this Agreement shall in any way limit the extent of the Owner's responsibility for payment of damages resulting from the operations and/or development of the Property and its contractors; provided, however, that the Owner shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their agents or employees.

6. Allocation of Special Taxes. The City Council, as the legislative body of the District, shall annually levy a special tax as provided for in the formation proceedings of the District. The entire amount of any special tax levied by the District to repay Bonds, or to fund other obligations, shall be allocated at the discretion of the District; provided, however, that the Water District shall have no obligation under this Agreement for any Water District Facilities unless sufficient special tax revenues and Bond Proceeds or other funds of the Owner are available and will be allocated to any Water District Facilities requested of the Water District.

7. Jointly and Severally Liable. The Don Clurman Property Trust, Three Strands Properties and Spectrum Communities agree that they are each obligated to perform the duties and obligations under this Agreement, and are each jointly and severally liable for any damages caused by their performance of or failure to perform such duties and obligations.

8. Amendment. This Agreement may be amended at any time but only in writing signed by each party hereto.

9. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties with respect to the subject matter of this Agreement.

10. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or seventy-two hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

City/District: City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530
Attn: Assistant City Manager

Elsinore Valley Municipal Water District:

Elsinore Valley Municipal Water District
P.O. Box 3000
31315 Chaney Street
Lake Elsinore, CA 92531
Attn: Director of Strategic Programs

Owner: c/o The Donald S. Clurman Separate Property Trust
640 Diamond Street
Laguna Beach, CA 92651
Attn: Don Clurman

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other parties hereto.

11. Exhibits. All exhibits attached hereto are incorporated into this Agreement by reference.

12. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

13. Governing Law and Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Riverside, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

14. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other parties hereto, or the failure by a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to insist and demand strict compliance by such other parties with the terms of this Agreement thereafter.

15. No Third Party Beneficiaries. No person or entity other than the District when and if formed shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the Water District, the City, the District and the Owner (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

16. Assignment. The Owner may assign all or any of its rights pursuant to this Agreement to a purchaser of all or any portion of the Developer Property. Such a purchaser and assignee shall, as a condition to taking an assignment of such rights, enter into an assignment and assumption agreement with the City and Owner, in a form reasonably acceptable to Owner and the City, whereby such rights assigned are specified and such purchaser agrees, except as may be otherwise specifically provided therein, to assume the obligations of the Owner pursuant to this Agreement and to be bound thereby.

17. Termination. This Agreement shall terminate on December 31, 2030, unless extended by all the parties hereto.

18. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and first year written above.

CITY OF LAKE ELSINORE, a political subdivision
of the State of California

By: _____
Assistant City Manager

ATTEST:

By: _____
Candice Alvarez, CMC, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY OF THE CITY OF LAKE ELSINORE

By: _____
Barbara Z. Leibold, City Attorney

ELSINORE VALLEY MUNICIPAL WATER
DISTRICT

By: _____
General Manager

ATTEST:

By: _____
Terese Quintanar, Board Secretary

APPROVED AS TO FORM:

By: _____
John Brown, General Counsel

THE DONALD S. CLURMAN SEPARATE
PROPERTY TRUST

By: _____
Don Clurman, Trustee

THREE STRANDS PROPERTIES, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

SPECTRUM COMMUNITIES, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A
DESCRIPTION OF PROPERTY

Real property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

Assessor Parcel Numbers:

EXHIBIT B

DESCRIPTION OF WATER DISTRICT FACILITIES

The proposed types of public facilities and expenses to be financed by the District include:

The construction, purchase, modification, expansion, rehabilitation and/or improvement of water and sewer facilities including the acquisition of capacity in the sewer system and/or water system of the Elsinore Valley Municipal Water District which are included in Elsinore Valley Municipal Water District's water and sewer capacity and connection fee programs (the "Facilities"), and all appurtenances and appurtenant work in connection with the foregoing Facilities, including the cost of engineering, planning, designing, materials testing, coordination, construction staking, construction management and supervision for such Facilities, and to finance the incidental expenses to be incurred, including:

- a. The cost of engineering, planning and designing the Facilities;
- b. Payment of any and all capacity and/or connection fees required by Elsinore Valley Municipal Water District to be paid prior to Elsinore Valley Municipal Water District extending water service to the Property.
- b. All costs, including costs of the property owner petitioning to form the District, associated with the creation of the District, the issuance of the bonds, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the District; and
- c. Any other expenses incidental to the construction, acquisition, modification, rehabilitation, completion and inspection of the Facilities.

EXHIBIT C

DISBURSEMENT REQUEST FORM

1. City of Lake Elsinore Community Facilities District No. 2006-4 (Rosetta Hills) ("CFD No. 2006-4") is hereby requested to pay from the Water District Facilities Account of the Acquisition and Construction Fund established by the City Council of the City of Lake Elsinore (the "City") in connection with its CFD No. 2006-4 Series _____ Special Tax Bonds (the "Bonds"), to the Elsinore Valley Municipal Water District (the "Water District"), as Payee, the sum set forth below in payment of project costs described below.

2. The undersigned certifies that the amount requested has been expended or encumbered for the purposes of constructing and completing Water District Facilities. The amount requested is due and payable under, or is encumbered for the purpose of funding, a purchase order, contract or other authorization with respect to the project costs described below and has not formed the basis of a prior request or payment. In the event that the Water District does not disburse any Bond proceeds received for disbursement to third parties within five banking days of receipt, the Water District agrees to trace and remit to CFD No. 2006-4 all earnings, if any, in excess of the yield on the Bonds accruing from the investment of such Bond proceeds, from the date of receipt by the Water District of such amounts to the date of expenditure of such amounts by payment thereof to a third party for the costs set forth below. Such remittance, if any, shall be made each year on the earlier of the expenditure of such amounts or the anniversary date of the transfer of the requested amounts by CFD No. 2006-4 to the Water District.

3. Description of Water District Facilities Costs:

4. Amount requested: \$_____.

5. The amount set forth is authorized and payable pursuant to the terms of the Joint Community Facilities Agreement among the City, _____, the Elsinore Valley Municipal Water District and the Developer named therein, dated as of _____, 2020 (the "Agreement"). Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

6. Total payments to the Water District for the Water District Facilities from CFD No. 2006-4, including the amounts to be paid under paragraph 4 above, will not exceed the maximum amount to be disbursed for Water District Facilities under the Agreement.

Executed by an authorized representative of the Elsinore Valley Municipal Water District.

By: _____

Name: _____

Title: _____

Date: _____

Request No. _____

CONCURRED BY:
