

**COMMUNITY FACILITIES DISTRICT NO. 2019-2 OF THE
CITY OF LAKE ELSINORE (NICHOLS RANCH)**

AMENDED AND RESTATED FUNDING AGREEMENT

THIS AGREEMENT is made and entered into by and between CITY OF LAKE ELSINORE (the "City"), acting for and on behalf of itself and CITY OF LAKE ELSINORE COMMUNITY FACILITIES DISTRICT NO. 2019-2 (NICHOLS RANCH) (the "Community Facilities District" or "CFD") and NICHOLS RD. PARTNERS, LLC, a California limited liability company (the "Developer") (each individually a "Party" and collectively the "Parties") and amends and restates in full that Funding Agreement, dated December 10, 2019 (the "Original Funding Agreement") by and between the City and the Developer.

WHEREAS, the City has previously established the CFD, which encompasses the property described in the attached **Exhibit "A"** (the "Developer Property"), pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), and has undertaken proceedings for the authorization of special taxes and issuance of bonded indebtedness for the payment of the construction and/or acquisition of certain public improvements to be owned, operated or maintained by the City and the Elsinore Valley Municipal Water District (the "Water District") and incidental expenses in accordance with the Act; and

WHEREAS, the City, acting for and on behalf of itself and the CFD, have previously entered into the Original Funding Agreement, providing for the funding, through the CFD, of certain City and Water District improvements; and

WHEREAS, Section 12(a) of the Original Funding Agreement provides that such agreement may be amended at any time in writing signed by each party thereto; and

WHEREAS, the City, acting for and on behalf of itself and the CFD, and the Developer desire to amend and restate the Original Funding Agreement, in its entirety, to provide for the funding by the CFD of certain improvements to be constructed by the Developer, to include additional facilities of the Water District to be funded by the CFD and to amend certain other provisions of the Original Funding Agreement as set forth herein; and

WHEREAS, the costs of the acquisition and construction of improvements to be funded by the CFD: (i) with respect to the improvements that are to be owned, operated and maintained by the City ("City Improvements"), are as more particularly set forth and described in the Description of Cost Estimates attached hereto as **Exhibit "B,"** (ii) with respect to improvements included in the City's fee programs (the "City Fee Facility Improvements"), are as more particularly set forth and described in **Exhibit "B"** and (iii) with respect to the improvements of the Water District, are described in **Exhibit "E"** hereto (the "Miscellaneous Improvements") (collectively the "Improvements"); and

WHEREAS, the City is authorized by the Act to form the CFD and to issue bonds to fund the Improvements; and

WHEREAS, the City Council has adopted the City's policies and procedures concerning the use of special district financing programs to finance City facilities (the "Policy"); and

WHEREAS, the purpose of this Agreement is amend and restate the Original Funding Agreement and to constitute a formal understanding between Developer and the City (pursuant to the requirements of Government Code Section 53313.51 and other provisions of the Act and the Policy) concerning financial and other obligations and responsibilities related to the Improvements to be financed by the Community Facilities District to the extent funds are available, and to set forth the conditions upon which (1) the Community Facilities District will reimburse Developer or its designee for the cost of the City Improvements constructed by or on behalf of the Developer and (2) the Community Facilities District will fund the City Fee Facility Improvements and the City will grant credit against applicable City fees; and (3) the Community Facilities District will also fund Miscellaneous Improvements, if any, which will be described in **Exhibit "E,"** if applicable.

NOW, THEREFORE, it is mutually agreed between the respective Parties as follows:

SECTION 1. DEVELOPER ADVANCES

At Developer's request, the City undertook the formation of the Community Facilities District and certain change proceedings with respect thereto. The Developer has advanced to the City a sum of money related to the costs of such formation and change proceedings, all of which shall be eligible for reimbursement from the CFD. The City will provide to Developer on request a summary of how the advances have been spent and the unexpended balance remaining. The amounts advanced by the Developer and, to the extent determined reasonable and appropriate by the City, expenses incurred by the Developer for engineering consultant costs in connection with the formation of the Community Facilities District, certain change proceedings with respect thereto, and the issuance of bonds, will be reimbursable to the Developer, without interest, from the proceeds of bonds (the "Bonds") issued by the Community Facilities District. In the event that Bonds are not issued to provide a source of reimbursement to Developer, the City shall not have any liability to Developer to reimburse it for any of the amounts previously advanced by Developer and expended by the City.

Prior to the issuance of the Bonds, the City will request a final advance for any unpaid expenses incurred during preparatory technical, financial and legal work; and following payment of such expenses, the City shall promptly release the balance, if any, of the advance to the Developer. Should the City's expenses exceed the remaining balance, the City will bill the Developer for the difference, which the Developer agrees to pay within 10 days following receipt of such billing, subject to the conditions of paragraph one of this section.

SECTION 2. SALE OF BONDS

2.1 City Policies and Requirements for the Issuance of Bonds. The City Council has adopted the Policy, setting forth the City's policies and procedures concerning the use of special district financing programs to finance the Improvements. Pursuant to the Policy, the total annual amount of the special taxes to be collected with respect to a parcel within the CFD and all other taxes and assessments which will be collected with respect to such parcel must not exceed two percent (2%) of the expected assessed value of such parcel within the Community Facilities District upon the completion of all expected structural improvements to such parcel and the sale of such parcel to the initial homeowner. In the event the sum of the special taxes and assessments exceed 2% of the expected assessed value of a parcel within the Community Facilities District, the City may require that the Developer or its assignees prepay a portion of the special tax obligation of such parcel prior to or in connection with the issuance of Bonds.

The Parties hereby agree that, unless waived by the City, at the time of issuance of the Bonds, the following requirements shall be met: (1) the ratio of the value of all parcels of property for which the Bonds are being issued to the amount of outstanding community facilities district or assessment district bonds attributable to such parcels (the "Value-to-Lien Ratio") may not be less than four-to-one (4:1) and (2) at least 50% of the proposed residential units within the Community Facilities District shall have been completed and conveyed to individual homeowners. The fair market value of the property within the Community Facilities District for purposes of determining the foregoing ratio will be determined based on the assessed value of the property or the appraised value of the property based on the appraisal made by an appraiser selected by the City with a valuation date within ninety (90) days of the issuance of the Bonds. Subject to satisfaction of the Policy and the requirements of this Agreement, the City shall use its best efforts to issue and sell the Bonds in one or more series in an amount sufficient to fund the Improvements in accordance with the schedule for development of the Developer Property.

2.2 Security for Payment of Special Taxes. Concurrently with the issuance and sale of each series of the Bonds, the owner of any land within the Community Facilities District, together with land owned by any affiliate (collectively, an "Account Party"), for which the Maximum Special Tax (as defined in the Rate and Method of Apportionment of Special Tax for the Community Facilities District (the "Rate and Method"), such Special Tax referred to herein as the "Special Tax" or "Special Taxes") in the fiscal year following the fiscal year in which the Bonds are issued are equal to or exceed 20% of the total Maximum Special Tax for such fiscal year, shall deliver to the City either (i) a renewable, irrevocable instrument of credit from a financial institution (rated "A" or better) or (ii) cash in-lieu thereof (a "Security"). The Security shall be in an amount equal to 100% of the expected Special Tax levy on the property owned by such Account Party in the two fiscal years following the fiscal year in which the Bonds are issued, based on ownership status as of a date that is within 60 days prior to the date of issuance of the Bonds (the "Stated Amount"). The Security shall be maintained by the Account Party in each fiscal year until terminated in accordance with Section 2.2(c) below. While the Security is still required, the Stated Amount of such Security shall be reduced as set forth in a "Certificate of Reduction or Termination" (as defined in Section 2.2(c) below).

The Security shall name the City, or its designee, as a beneficiary and shall provide that the City, or its designee, may draw an amount equal to any delinquencies in payment of semiannual installments of the Special Taxes levied on property owned by the Account Party in the Community Facilities District. The total amount to be drawn under the Security shall not exceed an amount equal to the Special Taxes owed by the Account Party with respect to property within the Community Facilities District that is delinquent at the time the draw is made. The amount drawn on the Security shall be applied in the same manner and for the same purposes as the delinquent Special Taxes would have been applied; provided, however the payment of a draw under the Security will not be deemed to cure the delinquency in payment of the Special Taxes.

If, subsequent to a draw on the Security and prior to the satisfaction of any reimbursements due to the institution providing the Security (the "Security Provider") pursuant to this Agreement, the City receives payment of all or a portion of the delinquent Special Taxes or the proceeds of a sale of delinquent real property pursuant to foreclosure proceedings ("Delinquency Proceeds") for a parcel for which the Security has been drawn, the Security Provider shall be reimbursed for such draws to the extent of Delinquency Proceeds net of the City's costs of collection, provided that the Security is or has been concurrently reinstated to, or a Substitute Security (as defined below) provided for, the then applicable Stated Amount. The Security Provider is intended by the Parties to be a third party beneficiary of this Section 2.2.

(a) The Security shall be renewed, or a substitute Security reasonably satisfactory to the City (a "Substitute Security") provided, not less than thirty (30) calendar days prior to the expiration of the Security or Substitute Security then in effect. If the Account Party provides a Substitute Security to the City, then the City or its designee, shall return any existing Security on the effective date of the Substitute Security to the Security Provider.

If the Security is not renewed within thirty (30) days prior to its expiration date and the requirements for release or termination of the Security as set forth in Section 2.2(c) below have not then been met, the full amount of the Security may be drawn by the City and deposited in an account established under the Indenture (as hereinafter defined) or in such account established with a financial institution selected by the City. Thereafter, amounts in such account shall be held as security, and if Special Taxes owed by the Account Party with respect to property within the Community Facilities District are not paid prior to delinquency, then such amounts in such account may be applied by the City to pay the delinquent Special Taxes owed by the Account Party with respect to such property on the same terms and conditions applicable hereunder to draws on the Security.

At such time as the Security is renewed, or a Substitute Security is accepted by the City, or the requirement for the Security has been terminated pursuant to this section, the City or its designee, shall release all amounts in the Security account to the Security Provider within ten (10) calendar days from the date of renewal or acceptance.

(b) Following the sale or transfer by the Account Party of any property to a person other than the Account Party, or upon the prepayment of the Special Tax obligation for a parcel owned by the Account Party, the Account Party shall notify the Community Facilities District of such event, in writing, and, if requested by the Account Party, the Stated Amount of the Security shall be reduced and be recalculated in accordance with this Section 2.2; provided, however, that City shall be required to recalculate such amount and reduce the Security a maximum of two times each calendar year and any costs associated with the recalculation and reduction shall be borne by the Account Party. The Security shall be terminated when (i) the Maximum Special Tax levy on the land owned by the Account Party in the Community Facilities District is responsible for less than 20% of the Maximum Special Tax levy in the current fiscal year and the Account Party is not delinquent in the payment of any Special Taxes, (ii) the Account Party has paid all Special Taxes in the current fiscal year and the property owned by the Account Party in the Community Facilities District is expected to be responsible for less than 20% of the Maximum Special Tax levy in the next fiscal year, or (iii) the Account Party has paid all Special Taxes in the current fiscal year and in the following fiscal year, the Community Facilities District will not levy the Special Tax on property within the Community Facilities District owned by the Account Party.

Reduction or termination of a Security shall occur automatically upon submission to the Security Provider by the City of a "Certificate of Reduction or Termination." The City shall deliver to the Security Provider, such Certificate of Reduction or Termination promptly upon receiving from the Account Party a certification which shall be made under penalty of perjury and which shall indicate (i) the legal description of all land owned by the Account Party, and either (ii) a recalculation of the new Stated Amount that the Account Party proposes be applicable to the Security or (iii) if termination of the Security is requested, a statement that one of the requirements set forth in (i) through (iii) of the preceding paragraph has been satisfied.

The Account Party shall notify the City of any events that will result in a reduction of the Stated Amount of the Security and shall provide the City with verification of said events. The Account Party may provide the City with a Substitute Security in the reduced amount, and the

City shall release and return to the Security Provider the Security then in effect. The Parties expressly acknowledge that the Account Party's failure to so notify the City or to reduce the Security at the times prescribed herein shall in no way effect or invalidate sale or transfer of property, or recordation of maps on property.

(c) If property is sold or transferred by an Account Party with the result that the land owned by the transferee or any of its affiliates ("Transferee") is responsible for twenty percent (20%) or more of the Maximum Special Tax in the current fiscal year, a Security on the same terms specified herein will be furnished by Transferee with respect to all land owned by such Transferee in the Community Facilities District. Any applicable purchase and sale agreement and/or escrow instructions shall notify the Transferee of this Security requirement and obligate the Transferee to provide such Security, if applicable. The Security of the Account Party will not be reduced to reflect the sale or transfer of land until a Security is furnished by the Transferee and accepted by the City. The issuing financial institution and the form and terms of said Security will be subject to reasonable prior approval by the City. All terms provided in this Section 2.2 are applicable to the Transferee by replacing the term "Account Party" at each place where it occurs in each section with the term "Transferee." Each provider of a Security for a Transferee shall be an express third party beneficiary of the provisions of this Section 2.2.

Any costs related to the holding or maintaining the Security, including any fees of a fiscal agent, trustee or other depository shall be borne by the Account Party.

2.3 Major Landowner Initial and Continuing Disclosure. An owner of land which is responsible for twenty percent (20%) or more of the Special Tax in the fiscal year in which the Bonds are issued or in the fiscal year following the fiscal year in which the Bonds are issued (a "Major Landowner") will be required to provide all information regarding the development of its property, including the financing plan for such development, which is necessary to ensure that the official statement for such Bonds complies with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") and all other applicable federal and state securities laws. Additionally, Developer acknowledges that, if it is a Major Landowner at the time of issuance of the Bonds, it will be necessary that Developer enter into a continuing disclosure agreement to provide such continuing disclosure pertaining to the development of the land owned by Developer within the CFD as necessary to assist the underwriter in complying with the continuing disclosure requirements of the Rule and/or to assist in the marketing of the Bonds.

2.4 Bond Issuance Parameters. The terms and conditions upon which each series of the Bonds shall be issued and sold, the method of sale of the Bonds and the pricing of the Bonds shall be determined solely by the City in its reasonable discretion in conformance with the requirements of Government Code Section 53313.5, the Act, the Policy, and this Agreement. The Bonds shall be issued with a term not to exceed 35 years and annual debt service on the Bonds shall be permitted to escalate by two percent (2%) per year consistent with the annual escalation of the Special Tax. The proceeds of the Bonds shall be used in the following priority to (1) fund a reserve fund for the payment of principal and interest with respect to the Bonds in an amount equal to the least of (i) ten percent (10%) of the total bond issue, (ii) maximum annual debt service on Bonds, or (iii) 125% of average annual debt service; (2) fund up to eighteen (18) months of capitalized interest; (3) reimburse the Developer or its designee pursuant to Section 1 and hereof for the costs described therein which have not already been reimbursed to the Developer from collected Special Tax; (4) pay for costs of issuance of the Bonds including, without limitation, underwriter's discount, bond counsel and disclosure counsel fees, appraisal and special tax consultant fees, printing, and fiscal agent fees; and (5) pay for the actual costs of the Improvements. The Community Facilities District shall maintain records relating to the

disbursements of proceeds of the sale of the Bonds. The Indenture or Resolution (hereinafter "Indenture") for the Bonds shall establish an acquisition and construction fund or improvement fund (herein, the "Improvement Fund") into which shall be deposited initially the proceeds of the Bonds net of the amount of proceeds required to fund items (1) through (5) in the second preceding sentence. The Indenture shall also establish separate accounts of the Improvement Fund designated the "City Improvements Account," "City Fee Facility Improvements Account," and any Miscellaneous Improvement Account(s) for the Miscellaneous Improvements described in **Exhibit "E"** if applicable, into which shall be deposited such portions of the Improvement Fund as directed by the City and in writing at or subsequent to the closing of the sale of the Bonds consistent with the following priorities:

(a) An amount sufficient to fund the reasonable, current estimated costs of the City Improvements for which the Developer has or expects to submit a Disbursement Request shall be deposited to the City Improvements Account;

(b) An amount sufficient to fund the reasonable, current estimated cost of the City Fee Facility Improvements anticipated to be funded out of the Bonds being issued shall be deposited in the City Fee Facility Improvements Account (any Special Taxes levied in the CFD and collected by the CFD remaining after the payment of administrative expenses of the CFD and the reimbursement of the Developer for costs pursuant to Section 1 hereof shall be deposited into the City Fee Facility Improvements Account at the time of Bond issuance, unless otherwise directed in writing by the Developer); and

(c) If applicable, an amount to be agreed upon between Developer and the CFD prior to the issuance of Bonds sufficient to fund the reasonable, current estimated cost of any Miscellaneous Improvements, if any, described in **Exhibit "E"** hereto, anticipated to be funded out of the Bonds being issued shall be deposited in the applicable Miscellaneous Improvement Account(s).

Interest earned on moneys deposited in each of the City Fee Facility Improvements Account, the City Improvements Account and the Miscellaneous Improvement Account(s) shall remain in such accounts until such time as all of the Improvements have been funded. Additionally, the Developer may direct the CFD to transfer excess moneys in any of the City Fee Facility Improvements Account, the City Improvements Account or the Miscellaneous Improvement Account(s) to another Account. The Indenture shall provide that amounts remaining in the Improvement Fund after funding all proposed Improvements or sooner, as agreed by the City and the Developer, shall be deposited in the special tax fund or bond service fund and be applied to pay debt service on the Bonds and/or to call Bonds in advance of maturity.

SECTION 3. ALLOCATION OF SPECIAL TAXES

Prior to the issuance of Bonds, the City Council of the City, acting as the legislative body of the Community Facilities District, may levy Special Taxes at the assigned special tax rate on all parcels classified as Developed Property pursuant to the Rate and Method. Such Special Taxes collected by the City shall first be applied to fund annual administrative expenses of the Community Facilities District and then to fund Improvements in the same manner as the proceeds of Bonds as set forth herein. Upon sale and delivery of the Bonds, the City shall annually levy the Special Tax as provided for in documents pursuant to which the Bonds were issued. Following the issuance of the Bonds, the City shall have no obligation to levy Special Taxes to reimburse the Developer for the costs of any Improvements not paid for from Bond proceeds. The entire amount of any Special Tax levied by the Community Facilities District to repay the Bonds and

recover costs and expenses allowable pursuant to Government Code Section 53313.5, shall be allocated to the Community Facilities District.

SECTION 4. NOTICE OF SPECIAL TAX

Developer, or Developer's successors or assigns, shall provide written notice to all potential initial purchasers of lots advising of the special tax obligation applicable to the Developer Property in the form required by Section 53341.5 of the Government Code. A sample copy as prepared by Developer is attached as **Exhibit "C."**

SECTION 5. DESIGN PLANS AND SPECIFICATIONS

The requirements of this Section shall not apply to any City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, but they shall apply to all other City Improvements for which the Developer submits a Disbursement Request. All plans, specifications and bid documents for the City Improvements ("Plans") constructed or to be constructed by the Developer shall be prepared by the Developer at the Developer's initial expense, subject to approval by the applicable public agency. Costs for preparation of the Plans will be eligible for reimbursement, conditioned upon the final approval of the applicable public agency and the availability of funds. Reimbursement of costs for plan revisions will be considered on a case by case basis. All facilities shall be bid in accordance with "public works" requirements of Section 6.4 to be eligible for reimbursement. The Developer shall not award bids for construction, or commence or cause commencement of construction, of a City Improvement until the Plans and bidding documents have been approved by the City. The bid opening for City Improvements shall be coordinated with and take place at the City's facilities, with City personnel in attendance.

SECTION 6. CONSTRUCTION OF IMPROVEMENTS

The requirements of this Section shall not apply to any City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, but they shall apply to all other City Improvements for which the Developer submits a Disbursement Request.

6.1 Construction or Acquisition Election. Upon the approval of Plans for a City Improvement, the Developer and the City shall determine whether the Developer will provide for construction of such City Improvement in accordance with Sections 6.2, 6.4 and 7 of this Agreement (the "Acquisition Election") or whether the City will provide for construction of such City Improvement in accordance with Section 6.3 of this Agreement (the "Construction Election"). Sections 6.2, 6.4 and 7 specify the requirements for construction of the City Improvements pursuant to the Acquisition Election that the City believes are necessary to ensure that such City Improvements are constructed as if they had been constructed under the direction and supervision, or under the authority of the City.

6.2 Acquisition Election. If the Acquisition Election is selected with respect to City Improvements in accordance with the provisions of Section 7 hereof, a qualified engineering firm (the "Field Engineer") shall be employed by the Developer to provide all field engineering surveys determined to be necessary by the City's inspection personnel. Field Engineer shall promptly furnish to City a complete set of grade sheets listing all locations, offsets, etc., in accordance with good engineering practices, and attendant data and reports resulting from Field Engineer's engineering surveys and/or proposed facility design changes. City shall have the right, but not

the obligation, to review, evaluate and analyze whether such results comply with applicable specifications.

A full-time soil-testing firm, approved by City, shall be employed by the Developer to conduct soil compaction testing and certification. The Developer shall promptly furnish results of all such compaction testing to the City for its review, evaluation and decision as to compliance with applicable specifications. In the event the compaction is not in compliance with applicable specifications, the Developer shall be fully liable and responsible for the costs of achieving compliance. A final report certifying all required compaction in accordance with the specifications shall be a condition of final acceptance of facilities.

The costs of all surveying, testing and reports associated with the City Improvements furnished and constructed by the Developer's contractor(s) shall be eligible to be paid from funds in the City Improvements Account.

The City shall not be responsible for conducting any environmental, archaeological, biological, or cultural studies or any mitigation requirements that may be requested by appropriate Federal, State, and/or local agencies. Any such work shall be paid for and conducted by the Developer and reimbursed out of the City Improvements Account.

Notwithstanding the selection of the Acquisition Election with respect to a City Improvement, should the Developer notify the City that the Developer is unable to complete such City Improvement, the City shall have the right but not the obligation to require the Developer to make an irrevocable offer of dedication to the City of the land owned by the Developer for the City Improvement identified in the notice and to assume responsibility for the work to be performed thereunder. In the event the City elects to assume the responsibility for any work on a previously awarded contract as described in the preceding sentence, the following will occur: (i) the Developer will make an irrevocable offer of dedication to the City of the land owned by the Developer for such City Improvement identified in the notice; (ii) to the extent permitted by law and the applicable contract, the Developer will assign all of the contracts for the work performed to date on the City Improvement identified in the notice to the City, if requested to do so by the City Manager; the City will use its best efforts to complete the City Improvement within a reasonable time frame; and upon completion of the City Improvement, to the extent there are Special Taxes or proceeds of the Bonds available following payment to the City for the costs of completing such City Improvement, the Developer will be reimbursed for the lesser of the cost or value of the previously unreimbursed satisfactory work performed or paid for by the Developer. The cost of such work will be determined by taking the unreimbursed amounts expended by the Developer under the contract(s) taken over by the City and deducting any incremental cost incurred by the City to complete the work under the contracts in question. Incremental cost shall be costs in excess of the sum of the original contract cost plus change orders approved by the City.

6.3 Construction Election. The Developer and the City shall agree on which Improvements shall be constructed by the Developer and which shall be constructed by the City. If the Construction Election is selected, upon the award of a construction contract for a City Improvement to be constructed by the City, funds in the City Improvements Account in an amount equal to the costs of the City Improvement, shall be reserved for payments under such contract and shall not be available for the funding of other City Improvements until all payments required by such contract have been made. At the time of either or both (i) the execution of a contract for the construction of a City Improvement as to which the Construction Election has been made, and (ii) completion of construction of the City Improvement, the Developer shall be entitled to

reimbursement from funds in the City Improvements Account of any actual costs of the City Improvements incurred by the Developer at that time.

If Bonds have not been issued or insufficient funds are reserved in the Improvement Fund, the City agrees to accept advances of funds from the Developer (if the Developer agrees to make such advances in its sole discretion) upon the City's award of a construction contract for a City Improvement to be constructed by the City in an amount equal to the difference between the amount of reserved funds and the contract amount. The amount of such advances shall be reimbursed to the Developer to the extent of funds in the City Improvements Account.

PUBLIC WORKS REQUIREMENTS

6.4 City Requirements. In order that the City Improvements as to which the Acquisition Election is made and for which a Disbursement Request is submitted may be properly and readily acquired by the City, the Developer shall comply with all of the following requirements with respect to any such City Improvements to be acquired with funds in the City Improvements Account, and the Developer shall provide such proof to the City as the City may reasonably require and at such intervals and in such form as the City may reasonably require, that the following requirements have been satisfied as to all such City Improvements:

(a) The Developer shall prepare a bid package for review, comment and approval by the City Manager of the City or his designee (the "City Representative").

(b) The Developer shall, after obtaining at least three sealed bids for the construction of the City Improvements in conformance with the procedures and requirements of the City, submit to the City written evidence of such competitive bidding procedure, including evidence of the means by which bids were solicited, a listing of all responsive bids and their amounts, and the name or names of the contractor or contractors to whom the Developer proposes to award the contracts for such construction, which shall be the lowest responsible bidder.

(c) The City Representative shall attend the bid opening. If unable to attend the bid opening, the City Representative shall approve or disapprove of a contractor or contractors, in writing, within five (5) business days after receipt from the Developer of the name or names of such contractor or contractors recommended by the Developer. If the City Representative disapproves of any such contractor; the Developer shall select the next lowest responsible bidder from the competitive bids received who is acceptable to the City Representative.

(d) The specifications and bid and contract documents shall require all such contractors to pay prevailing wages and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects and as required by the procedures and standards of the City with respect to the construction of its public works projects.

(e) The Developer shall submit faithful performance and payment bonds with respect to the City Improvements for which the Acquisition Election is made and the following documents shall be submitted to the City along with the performance and payment bonds:

(i) The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so;

(ii) A certified copy of the certificate of authority of the insurer issued by the State of California's Insurance Commissioner; and

(iii) Copies of the insurer's most recent annual and quarterly statements filed with the Department of Insurance.

(f) The Developer and its contractor and subcontractors shall be required to provide proof of insurance coverage throughout the term of the construction of the City Improvements, which they will construct in conformance with the City's standard procedures and requirements. The City's insurance requirements are set out in Section 20 herein.

(g) The Developer and all such contractors shall comply with such other requirements relating to the construction of the City Improvements which the City may impose by written notification delivered to the Developer and each such contractor at the time either prior to the receipt of bids by the Developer for the construction of such City Improvements or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof; provided that such other requirements shall only be imposed to the extent the City reasonably determines they are required in order to comply with applicable law. In accordance with Section 7, the Developer shall be deemed the awarding body and shall be solely responsible for compliance and enforcement of the provisions of the Labor Code, Government Code, and Public Contract Code.

(h) A "Change Order" is an order from the Developer to a contractor authorizing a change in the work to be performed. The Developer shall receive comments from the City Representative prior to the Developer's approval of any Change Order. The City Representative shall comment on or deny the Change Order request within five (5) business days of receipt of all necessary information. The City's comments to a Change Order shall not be unreasonably delayed, conditioned or withheld. The Developer shall not be entitled to be compensated for costs associated with a "Change Order" that has not been approved by the City Representative.

Developer shall provide proof to the City, at such intervals and in such form as the City may reasonably require, that the foregoing requirements have been satisfied as to all of the City Improvements as to which the Acquisition Election has been made which are funded through Bond proceeds.

SECTION 7. INSPECTION; COMPLETION OF CONSTRUCTION

The requirements of this Section shall not apply to any City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, but they shall apply to all other City Improvements for which a Disbursement Request is submitted.

The City shall have primary responsibility for inspecting the City Improvements to assure that the work is being accomplished in accordance with the Plans. Such inspection does not include inspection for compliance with safety requirements by the Developer's contractor(s). The City's personnel shall be granted access to each construction site at all reasonable times for the

purpose of accomplishing such inspection. Upon satisfaction of the City's inspectors, the Developer shall notify the City in writing that a City Improvement has been completed in accordance with the Plans. Any actual costs reasonably incurred by the City for inspection not previously paid by the Developer shall be reimbursed from funds in the City Improvements Account.

Within three (3) business days of receipt of written notification from City inspectors that a City Improvement has been completed in accordance with the Plans, the City Representative shall notify the Developer in writing that such City Improvement has been satisfactorily completed. Upon receiving such notification, the Developer shall file a Notice of Completion with the County of Riverside Records Office, pursuant to the provisions of Section 3093 of the Civil Code. The Developer shall furnish to the City a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County of Riverside (the "County"). City will in turn file a notice with the County for acceptance.

SECTION 8. LIENS

With respect to any City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, prior to any payment by the CFD to the Developer for such City Improvement, the Developer shall provide to the City such evidence or proof as the City shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the City Improvements have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. With respect to City Improvements, upon the earlier of (i) receipt of all applicable lien releases, or (ii) expiration of the time for the recording of claim of liens as prescribed by Sections 3115 and 3116 of the Civil Code, the Developer shall provide to the City such evidence or proof as the City shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the City Improvements have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation.

SECTION 9. ACQUISITION; ACQUISITION PRICE; SOURCE OF FUNDS

The acquisition price of a City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD shall be its fair market value, as determined by the City's Assistant City Manager or his or her designee, as of the date of acquisition. The City shall consider input and data provided by the Developer prior to determining the final fair market value.

The costs eligible to be included in the acquisition price of a City Improvement that is not described in the preceding paragraph (the "Actual Costs") shall include:

- (i) The actual hard costs for the construction of such City Improvement as established by the City-approved construction contracts and approved Change Orders, including costs of payment, performance and maintenance bonds and insurance costs, pursuant to this Agreement;
- (ii) The design and engineering costs of such City Improvement including, without limitation, the costs incurred in preparing the Plans. Costs for plan revisions will be considered on a case by case basis;

- (iii) The costs of environmental evaluations and public agency permits and approvals attributable to the City Improvement;
- (iv) Costs incurred by the Developer for construction management and supervision of such City Improvement, in an amount equal to five percent (5%) of the actual hard construction costs described in clause (i) above;
- (v) Professional costs associated with the City Improvement such as engineering, inspection, construction staking, materials, testing and similar professional services; and
- (vi) Costs approved by the City in accordance with the Act of acquiring any real property or interests therein required for the City Improvement including, without limitation, any water tank sites, temporary construction easements, temporary by-pass road and maintenance easements.

Provided the Developer has complied with the requirements of this Agreement, the City agrees to pay the acquisition price of a completed City Improvement to the Developer or its designee within thirty (30) days after the Developer's satisfaction of the preconditions to such payment stated herein, but only to the extent there are sufficient funds available in the City Improvements Account. Except in the case of a City Improvement described in the first paragraph of this Section, the acquisition price to be paid from Bond proceeds for the acquisition of a City Improvement by the City shall be the least of (1) the value of the City Improvement; or (2) the total of the Actual Costs of the City Improvement.

As a condition to the payment of the acquisition price, the ownership of the completed City Improvement shall be transferred to the City by grant deed, bill of sale or such other documentation as such public agency may require free and clear of all taxes, liens, encumbrances, and assessments, but subject to any exceptions determined by the City to not interfere with the actual or intended use of the land or interest therein (including the lien of a community facilities district so long as the subject property is exempt from taxation or is otherwise not taxable by such community facilities district). Upon the transfer of ownership of City Improvements or any portion thereof to the City, the City shall be responsible for the maintenance of such City Improvements or the portion transferred. Notwithstanding the foregoing, the acquisition price of a City Improvement may be paid prior to transfer of ownership and acceptance of the City Improvement if it is substantially completed at the time of payment. The City Improvement shall be considered "substantially complete" when it has been reasonably determined by the City to be usable, subject to final completion of such items as the final lift or any other items not essential to the primary use or operation of the City Improvement. If the acquisition price of a City Improvement is paid prior to transfer of ownership and acceptance based on it being "substantially complete", Developer may, upon transfer of ownership of such City Improvement to the City, submit a second reimbursement request for any unpaid portion of the Actual Costs associated with completing such improvement. If the acquisition price of a City Improvement is paid prior to transfer of ownership and acceptance based on it being "substantially complete", Developer may, upon transfer of ownership of such City Improvement to the City, submit a second reimbursement request for the additional Actual Costs associated with completing such improvement.

For purposes of determining the acquisition price to be paid by the Community Facilities District for the acquisition of the City Improvements by the City (other than City Improvements described in the first paragraph of this Section), the value of such City Improvements shall include

the construction costs specified in the City-approved contracts and City-approved Change Orders conforming to Section 6, as hereinbefore specified. City approval is a condition prior to initiation of contract work. However, if the City reasonably determines that the additional Actual Costs are excessive and that the value of the City Improvements is less than the total amount of such Actual Costs and such construction costs, the price to be paid for the acquisition of the City Improvements shall be the value thereof as determined by the Engineer, subject, however, to the Developer's right to appeal to the City's City Council.

Upon completion of the construction of a City Improvement that the Developer intends to fund from the City Improvement Account, the Developer shall deliver or cause to be delivered to the City a Disbursement Request Form in substantially the form of **Exhibit "D,"** attached hereto, copies of the contract(s) with the contractor(s) who have constructed the City Improvement and other relevant documentation with regard to the payments made to such contractor(s) and each of them for the construction of the City Improvement, documentation evidencing payment of prevailing wages, and shall also provide to the City invoices and purchase orders with respect to all equipment, materials and labor purchased for the construction of the City Improvements. The City shall require the Engineer to complete its determination of the acquisition price of the City Improvements as promptly as is reasonably possible.

Notwithstanding the preceding provisions of this Section, the source of funds for the acquisition of the City Improvements or any portion thereof shall be funds in the City Improvements Account. If for any reason beyond the City's control the Bonds are not sold, the City shall not be required to acquire the City Improvements from the Developer, except to the extent of funds from the collection of Special Taxes. In such event, the Developer shall complete the design and construction and offer to the City ownership of such portions of the City Improvements as are required to be constructed by the Developer as a condition to recordation of subdivision maps for the Developer Property (but only at such times as required by such condition), but need not construct any portion of the City Improvements which it is not so required to construct. Reimbursement for these facilities would be made from the collection of Special Taxes.

In addition to the foregoing, the City shall have the right to withhold payment for acquisition of a City Improvement, if:

(a) the Developer or any of its affiliates is delinquent in the payment of any Special Taxes levied by the Community Facilities District on properties then owned by the Developer or any of its affiliates within the CFD, or

(b) the Developer is not then in substantial compliance with a condition or obligation imposed upon the Developer Property by the City, including but not limited to, payment of all applicable fees, dedication of all applicable rights-of-way or other property and construction requirements.

The City shall immediately provide written notice to the Developer of the decision to withhold any such payment and shall specify the reason for such decision. If the payment is withheld as a result of the delinquency in the payment of Special Taxes, the notice shall identify the delinquent parcels and the amount of such delinquency. If the payment is withheld as a result of substantial non-compliance with a condition or obligation, the notice shall specify such condition or obligation and what action will be necessary by the Developer to substantially comply with such condition or obligation. Upon receipt of evidence reasonably satisfactory to the City that the Developer has paid the delinquent Special Taxes or complied with the subject condition or

obligation, the City shall forthwith make all payments which have been withheld pursuant to the provisions of this Section.

SECTION 10. EASEMENTS AND/OR FEE TITLE OWNERSHIP DEEDS

Without limiting the Developer's rights to reimbursement for such grants pursuant to Section 9 above, the Developer shall, at the time the City acquires the City Improvements as provided in Section 9 hereof, grant or cause to be granted to the City, by appropriate instruments prescribed by the City, all easements across private property and/or fee title ownership deeds which may be reasonably necessary for the proper operation and maintenance of such City Improvements, or any part thereof, but only to the extent located within the Developer Property.

SECTION 11. PERMITS

The Developer shall be responsible for obtaining all necessary construction permits from the City and/or the County (as appropriate) covering construction and installation of the City Improvement as to which the Acquisition Election has been made. If applicable, the City will request the County to issue an "operate and maintain permit" to the City, which will become effective upon the completion of the City Improvements and acceptance of ownership therewith by the City.

SECTION 12. MAINTENANCE

Prior to the transfer of ownership of a City Improvement by the Developer to the City, as provided in Section 9 hereof, the Developer shall be responsible for the maintenance thereof and shall require its contractor(s) to repair all facilities damaged by any party other than the City, prior to acceptance by the City and/or make corrections determined to be necessary by the City's inspection personnel. The City shall not be permitted to place any City Improvement in service prior to acceptance of the same, unless the Developer otherwise consents in writing.

SECTION 13. INSPECTION OF RECORDS

The City shall have the right to review all books and records of the Developer pertaining to the costs and expenses incurred by the Developer for the design and construction of the City Improvements during normal business hours by making arrangements with the Developer. The Developer shall have the right to review all books and records of the City pertaining to costs and expenses incurred by the City for services of the Engineer by making arrangements with the City.

SECTION 14. OWNERSHIP OF IMPROVEMENTS

Notwithstanding the fact that some or all of the City Improvements may be constructed in dedicated street rights-of-way or on property which has been or will be dedicated to the City, each City Improvement shall be and remain the property of the Developer until acquired by the City as provided in this Agreement.

SECTION 15. MATERIALS AND WORKMANSHIP WARRANTY

The requirements of this Section shall not apply to any City Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, but they shall apply to all other City Improvements.

Upon the completion of the acquisition of a City Improvement by the City, the performance bond related to such individual City Improvement provided by the Developer pursuant to Section 6.4(e) hereof, shall be reduced by 90%, and the remaining 10% shall serve as a maintenance bond to guarantee that such City Improvement will be free from defects due to faulty workmanship or materials for a period of one year.

SECTION 16. CITY FEE FACILITY IMPROVEMENTS

The Developer may be required pursuant to the conditions of development or the City's development impact fee ordinance to pay certain City fees (the "City Fees") relating to the City Fee Facility Improvements prior to the availability of proceeds of the Bonds to pay for such City Fee Facility Improvements. In the event such City Fees are paid prior to the availability of Bond proceeds, the amounts paid to the City shall be deemed to be deposits (each a "Deposit") that are subject to refund by the City to the Developer in accordance with this Agreement. The City shall place each Deposit in a capital facilities account(s). If the Developer has made any Deposits to the City, then following deposit of Bond proceeds in the City Fee Facility Improvements Account, the City shall return to the Developer, from the capital account in which the Deposits were deposited an equal amount of the Deposits not previously returned, without interest or other earnings thereon. The City shall be so obligated to return such Deposits only to the extent that an equivalent amount of the Deposits to be returned is deposited in the City Fee Facility Improvements Account from Bond proceeds or Special Tax collections prior to the issuance of Bonds.

Bond proceeds used to finance City Improvements which relate to the City Fees shall be allocated first for return of all Deposits prior to being allocated to the payment of City Fees not previously deposited by the Developer. Any Deposits that have not been returned to the Developer at the time it is determined that there will be no further Bond proceeds available (i.e. the final series of Bonds to finance the Improvements have been issued) shall be retained by the City and may be used for the purposes for which the City Fee was required, and the unrefunded Deposits shall constitute full and final payment for such City Fees, without any increase of any kind.

SECTION 17. MISCELLANEOUS IMPROVEMENTS.

Improvements unrelated to the City Improvements and the City Fee Facility Improvements, if applicable, will be supplemented by the terms contained in an addendum which will appear as **Exhibit "E"** hereto. The amounts deposited in the applicable Miscellaneous Improvement Account(s), if any, will be disbursed for the acquisition or construction of Miscellaneous Improvements in accordance with the provisions in the applicable Joint Community Facilities Agreement, if any. Any amounts in the applicable Miscellaneous Improvement Account(s) shall be disbursed at the written direction of the City upon Developer's submittal of a request for disbursement acceptable to the City. Upon receipt of the disbursement request, the City shall submit a written requisition for payment of the requested amount to the trustee for the Bonds, who shall directly pay the amount requested to the applicable entity.

SECTION 18. INDEPENDENT CONTRACTOR

In performing this Agreement, Developer is an independent contractor and not the agent of the City. The City shall not have any responsibility for payment to any contractor or supplier of Developer. It is not intended by the Parties that this Agreement create a partnership or joint venture among them and this Agreement shall not otherwise be construed.

SECTION 19. INDEMNIFICATION

Developer shall assume the defense of, indemnify and save harmless, the City, its officers, employees and agents, and the Community Facilities District, its officers, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subject or put, by reason of, or resulting from such person's or entity's performance of its obligations under this Agreement, the issuance of the Bonds and the construction of the City Improvements and the Miscellaneous Improvements (provided, however, that such indemnification shall not apply to any City Improvement that the City constructs itself pursuant to Section 6.3 of this Agreement), the failure of the Developer to provide notice of the Special Tax to be levied by the Community Facilities District pursuant to Section 53341.5 of the Act (but only if the Developer is required by law to provide such notice), or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the City, the Community Facilities District, the underwriter of the Bonds and its counsel, the appraiser, the special tax consultant, the market absorption consultant or bond counsel regarding the Developer, its proposed developments, its property ownership, and any contractual arrangement it may enter into in a disclosure document describing the Community Facilities District and the risks relating to the Bonds. No provision of this Agreement shall in any way limit the extent of Developer's responsibility for payment of damages resulting from the operations of Developer and its contractors; provided, however that Developer shall not be required to assume the defense or indemnify and save harmless any person or entity as to actions, damages, claims, losses or expenses resulting from the breach of this Agreement, the negligence or willful misconduct of such person or entity or their officers, agents, consultants or employees.

SECTION 20. INSURANCE REQUIREMENTS

Neither the Developer nor its contractor shall commence work on a City Improvement under this Agreement prior to obtaining insurance with a company or companies acceptable to the City, nor shall the Developer's contractor allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained.

The Developer shall, during the life of this Agreement, notify the City in writing of any incident giving rise to any potential bodily injury or property damage claim and any resultant settlements, whether in conjunction with this or any other project which may affect the limits of the required coverage, as soon as is reasonable and practical.

SECTION 21. CONFLICT WITH OTHER AGREEMENTS

Except as specifically provided herein, nothing contained herein shall be construed as releasing Developer from any condition of development or requirement imposed by any other agreement with City. In the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by City.

SECTION 22. TERMINATION

The provisions of this Agreement related to the financing of the Improvements shall terminate and be of no further force or effect upon the earlier of (i) ten (10) years following the issuance of building permits for all dwelling units expected to be built within the Community Facilities District, (ii) the funding of all Improvements pursuant to this Agreement, or (iii) December 31, 2030. Notwithstanding the foregoing, this Agreement shall not terminate pursuant to (iii) of

the previous sentence if, on December 31, 2030, all of the building permits within the Community Facilities District have been pulled, construction within the Community Facilities District, as contemplated by the parties hereto, is ongoing, and the Developer has not yet received a full return of all Deposits or full reimbursement for the Miscellaneous Improvements from Special Taxes.

SECTION 23. 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 (72) hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid. Any notice to the Community Facilities District or the City shall be addressed to City of Lake Elsinore, 130 South Main Street, Lake Elsinore, CA 92530, Attention: Assistant City Manager. Any notice to Developer shall be addressed to Nichols Rd. Partners, LLC, 25555 Maitri Road, Corona, CA 92883, Attention: Eric L. Werner, and Nichols Rd. Partners, LLC, P.O. Box 77850, Corona, CA 92877, Attention: Eric L. Werner.

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

SECTION 24. NO GIFT OR WAIVER.

24.1 No Gift or Waiver for City Improvements. The Developer and the City acknowledge that:

(a) The Developer or its predecessor may have constructed or may be constructing City Improvements before funds that will be used to acquire them are available with the expectation that the Developer will be reimbursed for such City Improvements to the extent and in the manner set forth in this Agreement.

(b) The City may inspect City Improvements and process Disbursement Request Forms even if funds from the proceeds of Bonds available at the time of such inspection and processing do not exist or are not then sufficient to satisfy the Disbursement Request in full.

(c) The Developer may convey City Improvements to the City and the City may accept such City Improvements even if funds from the proceeds of Bonds available at the time of such conveyance and acceptance do not exist or are not then sufficient to satisfy the Disbursement Request in full.

(d) If the City accepts City Improvements before a Disbursement Request is paid in full, the unpaid balance of the Disbursement Request will be paid from time to time, in any number of installments and irrespective of the length of time payment is deferred, as funds from the proceeds of Bonds become available.

(e) The Developer's conveyance or dedication of City Improvements to the City before the availability of funds from the proceeds of Bonds to acquire the City Improvements is not, and shall not be deemed, a gift or a waiver of the Developer's right to payment of the purchase price of such City Improvements pursuant to this Agreement.

24.2 No Gift or Waiver for City Fees. The Developer and the City acknowledge that:

(a) Prior to the availability of funds from the proceeds of Bonds, the Developer or its predecessor may have been or may be required to deposit funds to assure payment of applicable fees of the City.

(b) The Developer or its predecessor has deposited or will be depositing such funds with the expectation that the Developer will be reimbursed for these deposits to the extent and in the manner set forth in this Agreement.

(c) The reimbursement of such deposits pursuant to Section 16 of this Agreement may occur from time to time, in any number of installments and irrespective of the length of time payment is deferred, as funds become available.

(d) The Developer's deposit of such funds to the City before the availability of funds to reimburse the Developer is not, and shall not be deemed, a gift or a waiver of the Developer's right to reimbursement of such deposits pursuant to this Agreement.

SECTION 25. GENERAL PROVISIONS

(a) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the City and the Developer and their respective heirs, executors, legal representatives, successors, and authorized assigns.

(b) Amendment. This Agreement may be amended at any time but only in writing signed by each Party hereto.

(c) Entire Agreement. This Agreement, and the agreements referenced herein, contains the entire understanding and 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. There are no oral or written representations, understanding, undertakings or agreements which are not contained or expressly referred to herein, and any such representations, understandings or agreements are superseded by this Agreement. This Agreement shall be binding upon, and enforceable by and against the Community Facilities District upon the establishment of the Community Facilities District.

(d) Exhibits. All exhibits attached hereto are incorporated into this Agreement by reference.

(e) 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.

(f) 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.

(g) No Third Party Beneficiaries. Except as provided explicitly in this Agreement, no person or entity 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 City, the Community Facilities District, and Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

(h) 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.

(i) Assignment. Developer 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 Developer, in a form reasonably acceptable to Developer 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 Developer pursuant to this Agreement and to be bound thereby. A company that acquires all of the assets of the Developer, including ownership of the Developer itself, shall be deemed a successor and shall not require an assignment or assumption agreement to be bound by, and enjoy the benefits of, this Agreement.

(j) Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

(k) Construction of Agreement. This Agreement has been reviewed by legal counsel for both the City and Developer and shall be deemed for all purposes to have been jointly drafted by the City and Developer. No presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

(l) Attorneys' Fees. In the event of any action or proceeding, including an arbitration or a reference pursuant to Section 638, et seq., of the Code of Civil Procedure brought by any Party against any other under this Agreement, the prevailing Party shall be entitled to recover its actual attorneys' fees and all fees, costs and expenses incurred for prosecution, defense, consultation, or advice in such action or proceeding. In addition to the foregoing, the prevailing Party shall be entitled to its actual attorneys' fees and all fees, costs and expenses incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

(m) Venue and Forum. Any action at law or in equity arising under this Agreement brought by any Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Riverside, State of California, and the Parties waive all provisions of law providing for the filing, removal or change of venue to any other Court.

(n) Entire Agreement. Except as provided in an addendum, which if applicable, will appear as **Exhibit "E"** hereto, this Agreement sets forth and contains the entire understanding and agreement of the Parties. There are no oral or written representations, understandings, undertakings or agreements, which are not contained or expressly referred to herein, and any such representations, understandings or agreements are superseded by this Agreement. No evidence of any such representations, understandings or agreements shall be admissible in any proceeding of any kind or nature relating to the terms or conditions of this Agreement, its interpretation or breach.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written below.

Dated: January 12, 2021

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

By: _____
Assistant City Manager

ATTEST:

By: _____
Candice Alvarez, MMC, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY OF THE CITY OF LAKE ELSINORE

By: _____
Barbara Leibold, City Attorney

[SIGNATURES CONTINUED ON NEXT PAGE.]

[SIGNATURE PAGE CONTINUED]

Nichols Rd. Partners, LLC,
A California limited liability company

By: _____
Eric L. Werner, Member and Manager

By: _____
Patrick Broyles, Member and Manager

LIST OF EXHIBITS

- EXHIBIT A - DESCRIPTION OF DEVELOPER PROPERTY
- EXHIBIT B - DESCRIPTION OF COST ESTIMATES
- EXHIBIT C - NOTICE OF SPECIAL TAX (as prepared by Developer)
- EXHIBIT D - DISBURSEMENT REQUEST FORM
- EXHIBIT E - ADDENDUM

EXHIBIT A
DESCRIPTION OF DEVELOPER PROPERTY

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

Assessor Parcel Nos. (as set forth in the County of Riverside Assessor's Fiscal Year 2020-21 Roll):

389-200-045
389-200-047

EXHIBIT B
DESCRIPTION OF COST ESTIMATES OF THE IMPROVEMENTS

The Improvements consist of the City Fee Facility Improvements and the City Improvements, as described below. Any other types of Improvements will be described in an addendum to this Agreement appearing as **Exhibit "E."**

I. CITY FEE FACILITY IMPROVEMENTS.

City facilities included in the City's development fee programs used to finance expansion projects, exclusive of in-tract facilities constructed by a property owner, but including and not limited to the following:

| Estimated Cost of the City Improvements | |
|---|------------------------------|
| <i>Description</i> | <i>Estimated Cost</i> |
| Traffic Impact Fee | \$ 229,992 |
| Library Capital Improvement | 25,200 |
| City Hall & Public Works | 135,912 |
| Community Center Facilities | 91,560 |
| Marina Facilities | 130,872 |
| Animal Shelter | 58,464 |
| Fire Facility | 126,168 |
| Park Capital Improvement Fund | 302,400 |
| Park Capital Improvement Fund Credit | (302,400) |
| Drainage Fee | 467,880 |
| Total Fees | <u>\$ 1,266,048</u> |

II. CITY IMPROVEMENTS.

Those facilities constructed by or on behalf of the Developer and needed by City in order to provide services to the Developer Property and also includes any of the following:

| Estimated Cost of the City Improvements | |
|---|------------------------------|
| <i>Description</i> | <i>Estimated Cost</i> |
| Nichols Road Street Improvements | \$ 1,197,546 |
| Ranch Road and Stovepipe Creek Crossing | 725,000 |
| Community Park (Lot 171) | 2,100,000 |
| Park Capital Improvement Fund Credit | (302,400) |
| Total Improvements | <u>\$ 3,720,146</u> |

EXHIBIT C
NOTICE OF SPECIAL TAX

NOTICE OF SPECIAL TAX
COMMUNITY FACILITIES DISTRICT NO. 2019-2
OF THE CITY OF LAKE ELSINORE (NICHOLS RANCH)
COUNTY OF RIVERSIDE, CALIFORNIA

TRACT NO. _____, LOT NO. _____

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR ENTERING INTO A CONTRACT TO PURCHASE THIS PROPERTY. THE SELLER IS REQUIRED TO GIVE YOU THIS NOTICE AND TO OBTAIN A COPY SIGNED BY YOU TO INDICATE THAT YOU HAVE RECEIVED AND READ A COPY OF THIS NOTICE.

(1) This property is subject to a special tax, which is in addition to the regular property taxes and any other charges, fees, special taxes, and benefit assessments on the parcel. The Special Tax is imposed on this property because it is a new development, and may not be imposed generally upon property outside of this new development. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities or services that are likely to particularly benefit the property. YOU SHOULD TAKE THIS TAX AND THE BENEFIT FROM THE FACILITIES AND SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

(2) The property you are purchasing (the "Property") is within the boundaries of Community Facilities District No. 2019-2 of the City of Lake Elsinore (Nichols Ranch) (the "CFD") and is subject to an annual Special Tax levied pursuant to the Rate and Method of Apportionment of Special Taxes for the CFD (the "RMA"). Pursuant to the RMA, the annual Maximum Special Tax which may be levied against the Property to pay for public facilities in any given Fiscal Year depends on whether the Property is classified as "Developed Property", "Approved Property" or "Undeveloped Property" during the Fiscal Year for which the Special Tax is being levied. Pursuant to the RMA, Developed Property is defined in pertinent parts as "all Assessor's Parcels that (i) are included in a Final Map that was recorded prior to the January 1st preceding the Fiscal Year in which the Special Tax is being levied, and (ii) has an Assessor's Parcel Number from the County shown on an Assessor's Parcel Map for the individual lot included on the Final Map, and (iii) a Building Permit for new construction was issued on or before May 1st preceding the Fiscal Year in which the Special Tax is being levied." Approved Property is defined in pertinent parts as "all Assessor's Parcels of Taxable Property: (i) that are included in a Final Map that was recorded prior to the January 1st preceding the Fiscal Year in which the Special Tax is being levied, (ii) and has an assigned Assessor's Parcel Number from the County shown on an Assessor's Parcel Map for the individual lot included on the Final Map, and (iii) that have not been issued a Building Permit on or before May 1st preceding the Fiscal Year in which the Special Tax is being levied.". In each Fiscal Year prior to the first Fiscal Year in which the Property is classified as Developed Property or Approved Property, the Property will be classified as Undeveloped Property.

Undeveloped Property

If the Property is classified as Undeveloped Property during Fiscal Year 2021-2022, the annual Maximum Special Tax authorized to be levied against the Property by the CFD during such Fiscal Year to pay for public facilities shall be the \$21,333 per Acre. On each July 1, commencing July 1, 2022, the Maximum Special Tax rate for Undeveloped Property shall be increased by two percent (2.00%) of the amount in effect in the prior Fiscal Year.

Approved Property

If the Property is classified as Approved Property during Fiscal Year 2021-2022, the annual Maximum Special Tax authorized to be levied against the Property by the CFD during such Fiscal Year to pay for public facilities shall be the \$21,333 per Acre. On each July 1, commencing July 1, 2022, the Maximum Special Tax rate for Approved Property shall be increased by two percent (2.00%) of the amount in effect in the prior Fiscal Year.

Developed Property

If the Property is classified as Developed Property during Fiscal Year 2021-2022, the annual Maximum Special Tax authorized to be levied against the Property by the CFD during such Fiscal Year to pay for public facilities shall be the greater of (i) the applicable Assigned Special Tax for Developed Property as set forth in Table 1 of the RMA, which is reproduced in pertinent parts on the following page, or (ii) the Backup Special Tax applicable to the Property which the seller of the Property (the “Seller”) has calculated to be approximately \$_____ per Lot.

TABLE 1
ASSIGNED ANNUAL SPECIAL TAX
FOR DEVELOPED PROPERTY
(FISCAL YEAR 2021-2022)

| Land Use Category | Taxable Unit | Building Square Footage | Assigned Special Tax Per Taxable Unit |
|---------------------------------------|---------------------|--------------------------------|--|
| 1. Single Family Residential Property | RU | Less than 1,700 sq. ft | \$2,302.00 |
| 2. Single Family Residential Property | RU | 1,700 sq. ft to 1,900 sq. ft | \$2,379.00 |
| 3. Single Family Residential Property | RU | 1,901 sq. ft to 2,100 sq. ft | \$2,446.00 |
| 4. Single Family Residential Property | RU | 2,101 sq. ft to 2,300 sq. ft | \$2,523.00 |
| 5. Single Family Residential Property | RU | 2,301 sq. ft to 2,500 sq. ft | \$2,687.00 |
| 6. Single Family Residential Property | RU | 2,501 sq. ft to 2,700 sq. ft | \$2,736.00 |
| 7. Single Family Residential Property | RU | 2,701 sq. ft to 2,900 sq. ft | \$2,842.00 |
| 8. Single Family Residential Property | RU | Greater than 2,900 sq. ft | \$2,938.00 |
| 9. Multifamily Property | Acre | N/A | \$21,333.00 |
| 10. Non-Residential Property | Acre | N/A | \$21,333.00 |

On each July 1, commencing July 1, 2022, the Assigned Special Tax rate for Developed Property shall be increased by two percent (2.00%) of the amount in effect in the prior Fiscal Year. In the event it is necessary to levy the Backup Special Tax against the Property, the CFD Administrator will independently calculate the Backup Special Tax pursuant to the methodology set forth in Section D.1.c of the RMA. It is possible that the CFD Administrator’s calculation of the Backup Special Tax may be more or less than the Seller’s calculation. The Backup Annual Special Tax shall only be levied if the total of the amount collected by virtue of the levy of the Assigned Annual Special Tax on all Developed Property within the CFD, plus the amount collected by virtue of the levy of the annual Maximum Special Tax applicable to all Undeveloped Property and Approved Property within the CFD, is less than the “Special Tax Requirement”, as defined in the RMA, for the applicable Fiscal Year.

The Special Tax shall cease not later than the 2060-2061 Fiscal Year, however, Special Tax will cease to be levied in an earlier Fiscal Year if the CFD Administrator has determined (i) that all the required interest and principal payments on the CFD Bonds have been paid; (ii) all authorized facilities of the CFD have been acquired and all reimbursements to the developer have been paid, (iii) no delinquent Special Tax remain uncollected and (iv) all other obligations of the CFD have been satisfied.

(3) The types of facilities which are being paid for by the Special Tax and by money received from the sale of Bonds which are being repaid by the Special Taxes are the construction, purchase, modification, expansion, rehabilitation and/or improvement of (i) drainage, library, park, fire, roadway, traffic, administration and community center facilities, marina and animal shelter facilities, and other public facilities of the City, including the foregoing public facilities which are included in the City’s fee programs with respect to such facilities and authorized to be financed under the Mello-Roos Community Facilities Act of 1982, as amended, and (ii) 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, and (iii) to finance incidental expenses to be incurred. These facilities may not yet have been all constructed or acquired and it is possible that some may never be constructed or acquired.

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION WHICH AUTHORIZED CREATION OF THE CFD, AND WHICH SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS

APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE CITY OF LAKE ELSINORE BY CALLING (951) 674-3124. THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE READ THIS NOTICE AND RECEIVED A COPY OF THIS NOTICE PRIOR TO ENTERING INTO A CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITH RESPECT TO THE ABOVE REFERENCED PROPERTY. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITHIN THREE DAYS AFTER RECEIVING THIS NOTICE IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER, SUBDIVIDER, OR AGENT SELLING THE PROPERTY.

Dated: _____

By: _____

Name: _____

Dated: _____

By: _____

Name: _____

EXHIBIT D
CITY OF LAKE ELSINORE
CFD NO. 2019-2 (NICHOLS RANCH)
DISBURSEMENT REQUEST FORM

1. Community Facilities District No. 2019-2 of the City of Lake Elsinore (Nichols Ranch) (the "CFD") is hereby requested to pay from the _____ Account, or any applicable account or sub-account thereof, established by the CFD in connection with its 20__ Special Tax Bonds (the "Bonds") to City of Lake Elsinore (the "City") as payee, the sum set forth below:

\$_____ (the Requested Amount")

2. The Requested Amount represents the payment of City Fees for ____ lot(s) within the boundaries of the CFD (the "Property").

(Tract No. _____, Lot Nos. _____).

Or, City Improvements as supported by attached documentation.

3. The Requested Amount is due and payable, has not formed the basis of any prior request or disbursement.

4. The City, as payee, is hereby directing payment of the Requested Amount be payable to Nichols Rd. Partners, LLC, a California limited liability company (the "Developer"), pursuant to the wiring instructions attached hereto.

5. The Requested Amount is authorized and payable pursuant to the terms of the certain Acquisition, Construction and Funding Agreement (the "Agreement") between the City of Lake Elsinore, acting for and on behalf of itself and the CFD and Developer.

6. Capitalized undefined terms used herein shall have the meaning ascribed to them in the Agreement.

Dated: _____

DEVELOPER:

NICHOLS RD. PARTNERS, LLC, a California
limited liability company

By: _____

Name:

Title: Authorized Representative

Dated: _____

CITY OF LAKE ELSINORE

By: _____

Its: _____

[ATTACH WIRING INSTRUCTIONS]

EXHIBIT E
ADDENDUM

DESCRIPTION OF THE MISCELLANEOUS IMPROVEMENT

| Estimated Cost of the Water District Improvements | |
|---|------------------------------|
| <i>Description</i> | <i>Estimated Cost</i> |
| Water Capacity Fees (3/4" Meter) | \$ 2,353,008 |
| Temescal Valley Project CFD Credit (2021 Rate) | (520,918) |
| Temescal Valley Project CFD Credit (2020 Rate) | (825,360) |
| Water System Master Improvement Credit | (667,800) |
| Water Capacity Fees | 92,614 |
| Water Capacity Fees Credit (Estimated Credit) | (52,947) |
| Sewer Capacity Fees | 1,324,848 |
| Water Main Line – Nichols Road | 1,000,000 |
| Sewer Lift Station | 1,500,000 |
| Sewer Lift Station – 6" Force Main | 175,000 |
| Sewer Lift Station – Force Main Manholes | 55,000 |
| Other Construction Costs | <u>432,500</u> |
| Total Fees | <u>\$ 4,865,945</u> |