

JOINT COMMUNITY FACILITIES AGREEMENT
BY AND AMONG
CITY OF LAKE ELSINORE
AND
ELSINORE VALLEY MUNICIPAL WATER DISTRICT
AND
SPT- AREP III TUSCANY ASSOCIATES, LLC

(City of Lake Elsinore Community Facilities District No. 2021-1 (Tuscany Valley/Crest))

THIS JOINT COMMUNITY FACILITIES AGREEMENT ("Agreement") is dated ____, 2021, by and among the ELSINORE VALLEY MUNICIPAL WATER DISTRICT, County of Riverside, State of California, a municipal water district ("EVMWD") organized and operating pursuant to the Municipal Water District Law of 1911 as set forth in the California Water Code, the CITY OF LAKE ELSINORE, a municipal corporation ("City"), and SPT- AREP III Tuscany Associates, LLC ("Property Owner").

R E C I T A L S:

A. Property Owner is the owner of certain real property located within the boundaries of the EVMWD and the City and described in **Exhibit "A"** hereto (the "Property").

B. Property Owner intends to develop the Property for residential purposes and has obtained or intends to obtain the necessary development approvals to construct approximately 335 dwelling units on the Property, as such development may be modified from time to time (the "Project").

C. The Project will require the payment, pursuant to the rules and regulations of EVMWD, as amended from time to time ("EVMWD Rules and Regulations"), of certain EVMWD Charges (defined below). The EVMWD Charges may be paid directly to EVMWD, or paid and then reimbursed to the paying party, when Bond Proceeds (defined below) are available to fund an equal amount of such EVMWD Charges so paid.

D. The Project will also benefit, in whole or in part, from the construction of certain Acquisition Facilities (defined below and described on **Exhibit "B"** attached hereto). EVMWD and the Property Owner agree that any Acquisition Facilities to be constructed by Property Owner shall be eligible for acquisition by EVMWD and the costs thereof shall be eligible for reimbursement out of Bond Proceeds pursuant to this Agreement.

E. In conjunction with the recording of the final subdivision map(s) for the Project, the issuance of building permits for the construction of homes within the Project and/or receipt of water meters for such homes, it may be necessary for Property Owner, or its successors or assigns, to advance EVMWD Charges to EVMWD (the "Advances") before any Bond Proceeds are available to pay for EVMWD Charges. In such case, Property Owner shall be entitled to (i) reimbursement of such Advances and (ii) credit for payments made to the EVMWD from Bond Proceeds for EVMWD Charges which would otherwise be due to the EVMWD in conjunction with the Project, all as further described herein.

F. The Project will also require certain public improvements to be owned, operated or maintained by the City (the "City Improvements") which will also be eligible for financing through the CFD (defined below).

G. Pursuant to the request of the Property Owner, the City Council of the City has formed the CFD pursuant to the Act (defined below) to provide financing of the EVMWD Charges, Acquisition Facilities and City Improvements.

H. The City and EVMWD are authorized by Section 53313.5 of the Act to pay for or finance, by means of the CFD, the EVMWD Charges, Acquisition Facilities and City Improvements. This Agreement constitutes a "joint community facilities agreement" within the meaning of Section 53316.2 of the Act by and among EVMWD, the City and Property Owner, pursuant to which the CFD is authorized to finance the City Improvements and EVMWD Charges and to finance the construction and acquisition of Acquisition Facilities. As provided by Section 53316.6 of the Act, responsibility for providing and operating the Acquisition Facilities is delegated to EVMWD to the extent set forth herein and responsibility for constructing, providing and operating the City Improvements is delegated to the City.

I. The provision of the City Improvements, Acquisition Facilities and EVMWD Charges is necessitated by the Project, and the parties hereto find and determine that the residents of the City and EVMWD will be benefited by the payment of EVMWD Charges and construction and acquisition of the Acquisition Facilities and the City Improvements and that this Agreement is beneficial to the interests of such residents.

ARTICLE I

GENERAL PROVISIONS

Section 1.1 Recitals. The above recitals are true and correct and are hereby incorporated by this reference.

Section 1.2 Definitions. Unless the context clearly otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement, have the meanings herein specified.

(a) "Act" means the Mello-Roos Community Facilities Act of 1982, as amended, commencing with California Government Code Section 53311, *et seq.*

(b) "Acquisition Facility or Facilities" means those sewer and water facilities listed on **Exhibit "B"** hereto, which are eligible to be constructed by the Property Owner, acquired by EVMWD and paid for with Bond Proceeds.

(c) "Acquisition Price" means the amount to be paid out of Bond Proceeds for an Acquisition Facility.

(d) "Actual Costs" with respect to an Acquisition Facility includes: (i) the actual hard construction costs including labor, materials and equipment costs, (ii) the costs incurred in design, engineering and preparation of plans, (iii) the fees paid to consultants and government agencies in connection with and for obtaining permits, licenses or other required governmental approvals, (iv) a construction management fee of 5% of the costs described in clause (i) above, (v) professional costs such as engineering, legal, accounting, inspection construction staking, materials testing and similar professional services, (vi) costs of payment, performance of

maintenance bonds, and insurance costs (including the costs of any title insurance) and (vii) the value of any real property or interests therein that (1) are required for the construction of the Acquisition Facility such as temporary construction easements, haul roads, etc. and (2) are required to be conveyed with such Acquisition Facility in an amount equal to the fair market value of such real property or interests therein.

(e) “Advances” means an amount paid by Property Owner for EVMWD Charges prior to the issuance and sale of Bonds and which are eligible for reimbursement upon availability of Bond Proceeds to fund an equal amount of such Advances.

(f) “Agreement” means this Joint Communities Facilities Agreement.

(g) “Bond Proceeds” or “Proceeds of the Bonds” shall mean those net funds generated by the sale of the Bonds for an Improvement Area.

(h) “Bond Resolution” means that Resolution, Resolution Supplement, Fiscal Agent Agreement, Indenture of Trust or other equivalent document(s) providing for the issuance of a series of Bonds.

(i) “Bonds” shall mean those bonds, or other securities, issued by, or on behalf of the CFD, as authorized by the qualified electors within the CFD.

(j) “CFD” means Community Facilities District No. 2021-1 of the City of Lake Elsinore (Tuscany Valley/Crest).

(k) “Engineer” means the engineering firm or in-house personnel used by EVMWD to determine the value of an Acquisition Facility to be acquired with Bond Proceeds.

(l) “EVMWD Charges” means water connection fees, sewer connection fees, annexation fees and all components thereof of the EVMWD imposed upon the Project to pay for the provision of water and sewer services to and the construction of EVMWD water and sewer facilities required to serve the Project.

(m) “EVMWD Facilities Fund” means the fund, account or sub-account of the CFD (regardless of its designation within the Bond Resolution) into which a portion of the Bond Proceeds may be deposited, in accordance with the Bond Resolution and Funding Agreement to finance the construction and acquisition of the Acquisition Facilities and to pay EVMWD Charges.

(n) “EVMWD Representative” means the EVMWD Chief Engineer or his Designee.

(o) “Facilities” means the City Improvements, Acquisition Facilities and EVMWD Charges.

(p) “Field Engineer” shall have the meaning ascribed to the term in Section 3.

(q) “Funding Agreement” shall mean the Acquisition, Construction and Funding Agreement between City and Property Owner relating to the CFD, as it may be amended from time to time.

(r) "Improvement Area" shall mean an improvement area within the CFD designated in accordance with the Act.

(s) "Party" or "Parties" shall mean any one or all of the parties to this Agreement.

(t) "Plans and Specifications" shall mean the plans and specifications for the design and construction of an Acquisition Facility as approved by EVMWD, which approval shall not be unreasonably withheld.

(u) "Rate and Method" means the Rate and Method of Apportionment of the Special Tax for an Improvement Area authorizing the levy and collection of special taxes pursuant to proceedings undertaken for the formation of the CFD pursuant to the Act.

(v) "State" means the State of California.

(w) "Special Taxes" means the special taxes authorized to be levied and collected pursuant to a Rate and Method.

(x) "Substantially Complete," "Substantially Completed" or "Substantial Completion" with respect to an Acquisition Facility means that such Acquisition Facility is substantially complete in accordance with its Plans and Specifications and is available for use by the public for its intended purpose, notwithstanding any final "punch list" items still required to be completed, unless such items are required for the safe operation of such Acquisition Facility, and shall be based upon approval of EVMWD's inspectors, which shall not be unreasonably withheld.

ARTICLE II

ISSUANCE OF BONDS

Section 2.1 Issuance and Sale of Bonds. The City Council of the City, acting as the legislative body of the CFD, may, in its sole discretion, in accordance with its adopted policies and the Funding Agreement adopt the Bond Resolution and issue the Bonds to finance the Facilities.

Section 2.2 Bond Proceeds. Upon the issuance and sale of each series of Bonds, and receipt of the Bond Proceeds, the City shall determine the amount of the Bond Proceeds allocable to finance construction and acquisition of Acquisition Facilities and to pay EVMWD Charges in accordance with the Funding Agreement, and shall deposit such amount in the EVMWD Facilities Fund.

In conjunction with the recording of the final subdivision maps for the Property, the issuance of building permits for the construction of homes within the Property and/or receipt of water meters for such homes, it may be necessary for Property Owner, or its successors or assigns, to make Advances before Bonds are issued. Upon the issuance and sale of the Bonds, Property Owner may execute and submit a payment request to the CFD requesting disbursement of an amount equal to all Advances from the EVMWD Facilities Fund. The Property Owner shall only be entitled to receive reimbursement of the Advances if Bond Proceeds equal to the amount of such Advances to be reimbursed are deposited in the EVMWD Facilities Fund.

From time to time following the issuance and sale of the Bonds, Property Owner shall authorize EVMWD in writing to request a disbursement from the EVMWD Facilities Fund to fund

EVMWD Charges. Upon such notice and EVMWD's receipt of such disbursement, Property Owner shall be deemed to have satisfied the applicable EVMWD Charges with respect to the number of dwelling units or lots for which the EVMWD Charges would otherwise have been required in an amount equal to such disbursement.

EVMWD agrees that it will request a disbursement of Bond Proceeds only for costs related to the EVMWD facilities that are eligible for financing under the Act. With respect to the Acquisition Facilities, EVMWD agrees that prior to requesting payment from the CFD it shall review and approve all costs included in its request. With respect to all EVMWD Charges, EVMWD agrees that prior to requesting payment from the CFD it shall review and approve all costs included in its request. EVMWD will submit a request for disbursement of Bond Proceeds along with adequate supporting documentation to the District which shall be in the form attached hereto as **Exhibit "C."**

EVMWD agrees that in processing the above disbursements with respect to EVMWD 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, EVMWD agrees that it shall provide to the CFD, a certificate to the effect that EVMWD confirms the representations contained in Section 2.2 hereof, EVMWD agrees to comply with the provisions of the tax certificate delivered by the CFD in connection with the Bonds, and such other matters as the CFD may reasonably request upon which the CFD 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.

Section 2.3 Responsibility for EVMWD Charges and Acquisition Facilities.

(a) The Parties hereto acknowledge and agree that the final responsibility for the payment of the EVMWD Charges and the design, construction and dedication of Acquisition Facilities to be constructed by Property Owner lies with the Property Owner.

(b) If the amounts derived from Bond Proceeds deposited in the EVMWD Facilities Fund, including investment earnings thereon, if any, are not sufficient to fund the total cost of the EVMWD Charges and Acquisition Facilities to be constructed by Property Owner, the parties hereto agree that all responsibility and liability for the amount of such shortfall shall be and remain with the Property Owner and shall not lie with the City, CFD or EVMWD.

(c) In addition to financing the EVMWD Charges described above, the Parties acknowledge that EVMWD may require the Property Owner, pursuant to the EVMWD Rules and Regulations, to design, construct and dedicate to EVMWD Acquisition Facilities as a condition to providing water and sewer service to the Property. The Parties also agree and acknowledge that all responsibility and obligation for the design, construction and dedication of such Acquisition Facilities to EVMWD, in accordance with all applicable statutes and the EVMWD Rules and Regulations, shall be and remain the responsibility of the Property Owner.

(d) EVMWD agrees to utilize or apply funds provided to it by the CFD, in accordance with the Act and other applicable law, and as set forth herein, for the EVMWD Charges and Acquisition Facilities to be constructed by Property Owner.

(e) Property Owner shall indemnify, defend, and hold harmless, the City, CFD, and EVMWD, their respective 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 the design, engineering, construction, and transfer of ownership of the Acquisition Facilities constructed by Property Owner.

(f) EVMWD shall indemnify, defend, and hold harmless, the City, CFD and Property Owner, their respective 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 the design, engineering, construction, and acquisition of the Acquisition Facilities constructed by EVMWD and the facilities constructed with the proceeds of the EVMWD Charges.

Section 2.4 Responsibility for Debt Service or Special Taxes. EVMWD shall have no obligation, responsibility, or authority with respect to the issuance and sale of the Bonds, the Bond Proceeds available to finance the construction and acquisition of the Acquisition Facilities and to pay EVMWD Charges, the payment of the principal and interest on the Bonds, or for the levy of the Special Taxes to provide for the payment of principal and interest thereon. The CFD shall have the sole authority and responsibility for all such matters.

The Parties hereto specifically agree that the liabilities of the CFD, including liabilities, if any, of the CFD pursuant to the documents providing for the issuance of Bonds, including the Bond Resolution, shall not be or become liabilities of EVMWD.

Section 2.5 Administration of the CFD. The City shall have the power and duty to provide for the administration of the CFD once it is formed, subject to the terms hereof and the Funding Agreement, including employing and compensating all consultants and providing for the various other administration duties set forth in this Agreement. It is understood and agreed by Parties hereto that EVMWD will not be considered a participant in the proceedings relative to formation of the CFD or the issuance of the Bonds, other than as a Party to this Agreement.

ARTICLE III

CONSTRUCTION AND ACQUISITION OF ACQUISITION FACILITIES

Section 3.1 Construction of Acquisition Facilities by Property Owner. The following provisions of this Article III shall apply solely with respect to those Acquisition Facilities to be constructed by the Property Owner and acquired by EVMWD with Bond Proceeds:

(a) The Property Owner will complete the Plans and Specifications for such Acquisition Facilities. The Plans and Specifications shall include EVMWD's standard specifications and shall be subject to EVMWD approval, which shall not be unreasonably withheld. EVMWD agrees to process any Plans and Specifications for approval with reasonable diligence and in a timely manner. The Property Owner may proceed with the construction of any such Acquisition Facilities in accordance with the provisions of Section 3.2 hereof. A qualified engineering firm (the "Field Engineer") shall be employed by Property Owner to provide all field engineering surveys determined to be necessary by the EVMWD inspection personnel. Field Engineer shall promptly furnish to EVMWD a complete set of grade sheets listing all locations, offsets, etc., in accordance with good engineering practices, and attendant data and reports resulting from the Field Engineer's engineering surveys and/or proposed facility design changes. EVMWD shall have the right, but not the obligation, to review, evaluate and analyze whether such results comply with applicable specifications.

(b) A full-time soils testing firm, approved by EVMWD, shall be employed by Property Owner to conduct soil compaction testing and certification. Property Owner shall promptly furnish results of all such compaction testing to the EVMWD for its review, evaluation and decision as to compliance with applicable specifications. In the event the compaction is not in accordance or compliance with applicable specifications, Property Owner shall be fully liable and responsible therefore. A final report shall be required fully certifying trench compaction efforts prior to acceptance of each of the Acquisition Facilities.

(c) The cost of all surveying, compaction testing and report costs associated with such Acquisition Facilities furnished and constructed by any contractors or sub-contractors (collectively, "Contractors") shall be included among the costs which are eligible to be paid from the EVMWD Facilities Fund.

(d) EVMWD shall not be responsible for conducting any environmental, archaeological, biological, or cultural studies or any mitigation requirements related to the Acquisition Facilities to be constructed by Property Owner that may be requested by appropriate Federal, State, and/or local agencies. Any such work shall be paid for and such work shall be conducted by, or on behalf of Property Owner and the costs of such work shall be eligible to be paid from the EVMWD Facilities Fund.

Section 3.2 Public Works Requirements. In order to insure that the Acquisition Facilities to be constructed by the Property Owner, completed after formation of the CFD and acquired with Bond Proceeds will be constructed as if they had been constructed under the direction and supervision, or under the authority of, the EVMWD, so that they may be acquired by the EVMWD pursuant to Government Code Section 53313.5, the Property Owner shall comply with all of the following requirements:

(a) The Property Owner shall obtain bids for the construction of such Acquisition Facilities in conformance with the standard procedures and requirements of the EVMWD with respect to its public works projects or in a manner which is approved by the EVMWD Representative.

(b) The contract or contracts for the construction of such Acquisition Facilities shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of such Acquisition Facilities.

(c) The Property Owner shall require, and 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 EVMWD with respect to the construction of its public works projects.

(d) Said Contractors shall be required to furnish labor and material payment bonds and contract performance bonds in an amount equal to 100 percent of the contract price naming the Property Owner and the EVMWD as obligees and issued by insurance or surety companies approved by the EVMWD. All such bonds shall be in a form approved by the EVMWD Representative. Rather than requiring its Contractors to provide such bonds, the Property Owner may elect to provide the same for the benefit of its Contractors.

(e) All such Contractors shall be required to provide proof of insurance coverage throughout the term of the construction of such Acquisition Facilities which they will construct in conformance with EVMWD's standard procedures and requirements.

(f) The Property Owner and all such Contractors shall comply with such other requirements relating to the construction of such Acquisition Facilities which the EVMWD may impose by written notification delivered to the Property Owner and each such Contractor at any time either prior to the receipt of bids by the Property Owner for the construction of such Acquisition Facilities or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof. In accordance with this Section 3.2, the Property Owner 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 of the State of California.

The Property Owner shall provide proof to the EVMWD, at such intervals and in such form as the EVMWD Representative may require, that the foregoing requirements have been satisfied as to all of the Acquisition Facilities constructed by Property Owner, acquired by EVMWD and paid for with Bond Proceeds.

Section 3.3 Inspection; Completion of Construction. EVMWD shall have primary responsibility for providing inspection of the construction of the Acquisition Facilities constructed by the Property Owner to insure that the construction is accomplished in accordance with the Plans and Specifications. EVMWD's personnel shall have access to the site of the work at all reasonable times for the purpose of accomplishing such inspection. Upon Substantial Completion of the construction of such Acquisition Facilities by Property Owner, the Property Owner shall notify the EVMWD in writing that the construction of such Acquisition Facilities has been Substantially Completed.

Upon receiving such written notification from the Property Owner, and upon receipt of written notification from its inspectors that construction of any of the Acquisition Facilities by Property Owner has been Substantially Completed, the EVMWD shall in a timely manner notify the Property Owner in writing that the construction of such Acquisition Facilities has been satisfactorily completed. Upon receiving such notification, the Property Owner shall forthwith file with the County Recorder of the County of Riverside a Notice of Completion in accordance with procedures of the County of Riverside. The Property Owner shall furnish to the EVMWD a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County Recorder. Any actual costs reasonably incurred by the EVMWD in inspecting and approving the construction of any Acquisition Facilities by Property Owner not previously paid by the Property Owner shall be eligible to be reimbursed from the EVMWD Facilities Fund or paid directly by Property Owner.

Section 3.4 Liens. The Property Owner shall provide to the EVMWD such evidence or proof as the EVMWD shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment on behalf of Property Owner for the construction of any Acquisition Facilities have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation.

Section 3.5 Acquisition, Acquisition Price; Source of Funds. Provided the Property Owner has complied with the requirements of this Agreement, EVMWD agrees to acquire the Acquisition Facilities from the Property Owner. The price to be paid by the CFD for the acquisition of such Acquisition Facilities by EVMWD (the "Acquisition Price") shall be the lesser of (i) the

value of the Acquisition Facilities or (ii) the total of the Actual Costs of the Acquisition Facilities. The Property Owner shall transfer ownership of the Acquisition Facilities to the EVMWD by grant deed, bill of sale or such other documentation as the EVMWD may require. Upon the transfer of ownership of the Acquisition Facilities or any portion thereof from the Property Owner to EVMWD, EVMWD shall be responsible for the maintenance of the Acquisition Facilities or the portion transferred.

For purposes of determining the Acquisition Price to be paid by the CFD for the acquisition of the Acquisition Facilities by EVMWD, the value of such improvements shall be the amount determined by the Engineer, to be the value of the Acquisition Facilities based on the Actual Costs submitted by the Property Owner, as hereinbefore specified; provided, however, that if the Engineer determines that such Actual Costs, or any of them, are excessive and that the value of the Acquisition Facilities is less than the total amount of such Actual Costs, the Acquisition Price to be paid by the CFD for the acquisition of the Acquisition Facilities shall be the value thereof as determined by the Engineer.

Upon completion of the construction of any Acquisition Facilities by Property Owner, the Property Owner shall deliver to EVMWD copies of the contract(s) with the Contractor(s) who have constructed the Acquisition Facilities or other relevant documentation with regard to the payments made to such Contractor(s) and each of them for the construction of such Acquisition Facilities, and shall also provide to EVMWD copies of all invoices and purchase orders with respect to all supplies and materials purchased for the construction of such Acquisition Facilities. EVMWD shall require the Engineer to complete its determination of the value of the Acquisition Facilities as promptly as is reasonably possible.

The Acquisition Price of any Acquisition Facilities may be determined and paid out of the EVMWD Facilities Fund prior to transfer of ownership of the Acquisition Facilities to EVMWD upon a determination of Substantial Completion of such Acquisition Facility. Upon transfer of ownership of an Acquisition Facilities to EVMWD, Property Owner may submit a second reimbursement request for "punch list" items and any other eligible costs not included in the initial request. Property Owner shall submit a payment request form to the CFD in the format and with the information required by the Funding Agreement, which must also contain therewith approval of EVMWD, which approval shall not be unreasonably withheld.

Notwithstanding the preceding provisions of this section, the sole source of funds for the acquisition by EVMWD of the Acquisition Facilities or any portion thereof shall be the Bond Proceeds made available by the CFD pursuant to Section 2.3 above. If for any reason beyond EVMWD's control, the Bonds are not sold, EVMWD shall not be required to acquire any Acquisition Facilities from the Property Owner. In such event, the Property Owner shall complete the design and construction and offer to the EVMWD ownership of such portions of Acquisition Facilities as are required to be constructed by the Property Owner as a condition to recordation of subdivision maps for the Property or any other agreement between Property Owner and EVMWD, but need not construct any portion of the Acquisition Facilities which it is not so required to construct.

Section 3.6 Easements. The Property Owner shall, at the time EVMWD acquires the Acquisition Facilities as provided in Section 3.2 hereof, grant to EVMWD, by appropriate instruments prescribed by EVMWD, all easements on private property which may be reasonably necessary for the proper operation and maintenance of such Acquisition Facilities, or any part thereof.

Section 3.7 Maintenance. Prior to the transfer of ownership of an Acquisition Facility by the Property Owner to the EVMWD, as provided in Section 3.5 hereof, the Property Owner shall be responsible for the maintenance thereof and shall maintain and transfer such Acquisition Facility to EVMWD in as good condition as the Acquisition Facility was in at the time the Property Owner notified the EVMWD that construction of same had been completed in accordance with the Plans and Specifications.

The Parties agree that the construction and acquisition of the Acquisition Facilities to be constructed by Property Owner is a matter between Property Owner and EVMWD only, and that the City and the CFD shall have no responsibility for on-site inspection or monitoring or for certifying that the provisions of Article III of this Agreement be satisfied.

ARTICLE IV **TERM AND TERMINATION**

Section 4.1 Effective Date. This Agreement shall become effective and of full force and effect as of the date ("Effective Date") it is approved by the Property Owner, the City Council of the City and governing board of the EVMWD, to be confirmed by the execution hereof by the authorized representatives of the Parties hereto.

Section 4.2 Termination. This Agreement 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 CFD, (ii) the funding of all EVMWD Facilities pursuant to this Agreement, or (iii) December 31, 2031. Notwithstanding the foregoing, this Agreement shall not terminate pursuant to (iii) of the previous sentence if, on December 31, 2031, all of the building permits within the CFD have been pulled, construction within the CFD, as contemplated by the parties hereto, is ongoing, and the Property Owner has not yet has not been fully reimbursed for Advances or has not been paid the Acquisition Price of any Acquisition Facilities pursuant to Section 3.5 above.

ARTICLE V **ADDITIONAL GENERAL PROVISIONS**

Section 5.1 Recordkeeping; Inspection of Records. EVMWD hereby agrees to keep and maintain full and accurate records of all amounts, and investment earnings, if any, paid to EVMWD for the EVMWD Charges and the City hereby agrees to keep and maintain full and accurate records of all amounts, and investment earnings, if any, expended from the EVMWD Facilities Fund. Each Party further agrees to make such records available to any other Party hereto, including Property Owner, during normal business hours upon reasonable prior notice. All such records shall be kept and maintained by the appropriate Party as provided by applicable law and their respective policies.

Section 5.2 Partial Invalidity. 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.

Section 5.3 Successors and Assigns. Property Owner may assign its rights pursuant to this Agreement to a purchaser of the Property, or any portion thereof who shall be the owner of any Acquisition Facilities as payer of any EVMWD Charges and to whom Property Owner shall assign the right to receive payment of the Acquisition Price for such Acquisition Facilities or other rights under this Agreement with respect to EVMWD Charges. Such a purchaser and assignee

shall enter into an assignment agreement with the Property Owner, in a form acceptable to the EVMWD and the City, whereby such purchaser agrees, except as may be otherwise specifically provided therein, to assume the obligations of Property Owner pursuant to this Agreement and to be bound thereby. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

Section 5.4 Notice. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any Party or other person shall be deemed to have been received when personally delivered or upon deposit of the same in the United States Post Office registered or Certified, postage prepaid, addressed as follows:

| | |
|-----------------|--|
| City: | City of Lake Elsinore 130 S. Main Street Lake Elsinore, CA 92530 Attention: City Manager |
| EVMWD: | Elsinore Valley Municipal Water District 31315 Chaney Street Lake Elsinore, CA 92530 Attention: General Manager |
| Property Owner: | SPT- AREP III Tuscany Associates, LLC 2 Park Plaza, Suite 700 Irvine, CA 92614 Attention: Tom Bitney |

Each Party can change its address for delivery of notice by delivering written notice of such change or address to the other parties within ten (10) calendar days prior to such change.

Section 5.5 Captions. The captions to Sections used herein are for convenience purposes only and are not part of this Agreement.

Section 5.6 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and performed in such State.

Section 5.7 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.

Section 5.8 Amendments. This Agreement may be amended or modified only in writing executed by the authorized representative(s) of each of the Parties hereto.

Section 5.9 Waiver. The failure of any Party hereto to insist on compliance within any of the terms, covenants or conditions of this Agreement by any other Party hereto, shall not be deemed a waiver of such terms, covenants or conditions of this Agreement by such other Party, nor shall any waiver constitute a relinquishment of any other right or power, for all or any other times.

Section 5.10 Cooperation and Execution of Documents. The Parties hereto agree to complete and execute any further or additional documents which may be necessary to complete or further the terms of this Agreement.

Section 5.11 Attorneys' Fees. In the event of the bringing of any action or suit by any Party against any other Party arising out of this Agreement, the Party in whose favor final judgment shall be entered shall be entitled to recover from the losing Party all costs and expenses of suit, including reasonable attorneys' fees.

Section 5.12 Exhibits. The following exhibits attached hereto are incorporated into this Agreement by reference.

| <i>Exhibit</i> | <i>Description</i> |
|-----------------------|------------------------------------|
| "A" | Property Description |
| "B" | Acquisition Facilities Description |
| "C" | Disbursement Request Form |

Section 5.13 Signatories. The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the party for whom they sign.

Section 5.14 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

[Remainder of this page is blank]

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: _____
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 FOLLOWING PAGES]

[SIGNATURE PAGE CONTINUED]

ELSINORE VALLEY MUNICIPAL WATER
DISTRICT

By: _____
Its: Greg Thomas, General Manager

ATTEST:

By: _____
Its: Terese Quintanar, Board Secretary

APPROVED AS TO FORM:

By: _____
Its: Steve Anderson, General Counsel

[SIGNATURE PAGE CONTINUED]

SPT- AREP III Tuscany Associates, LLC

By: _____

Name: Brian Rupp

Title: Executive Vice President, Real Estate

EXHIBIT A

PROPERTY DESCRIPTION

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

Assessor's Parcel Nos:

349-240-006
349-380-024
349-380-025
349-240-043
349-240-044
349-240-045
349-240-046
349-240-047
349-240-054
349-240-055
349-240-056
349-240-034
349-240-038
349-240-072
349-240-075

EXHIBIT B

ACQUISITION FACILITIES DESCRIPTION

1. SEWER LIFT STATION \$1,994,508 + contingency 10%
 - a. A Sewer lift station is proposed to the southern portion of the site. cost includes:
 - i. Lift station facility
 - ii. 4,380 LF On site - off site force main
 - iii. Jack-N- bore force main under Wasson creek.
 - iv. Gravity sewer line to connection-
2. OFF SITE WATER LINE \$1,485,048 + contingency 10%
 - a. Off - site domestic water is required to serve the project site in Greenwald Avenue
 - i. 4,300 LF 16" DIP water line
 - ii. 2,160 LF 20" DIP water line
 - iii. Includes valves, bends, blow offs, Tee's, Air -Vac's, fire hydrants, minor street work, patch paving, traffic control,

Note: The description and estimated costs of the Acquisition Facilities is preliminary in nature. The final nature and location of the Acquisition Facilities will be determined upon preparation of final plans and specifications, and the Actual Costs may ultimately be higher than estimated herein.

EXHIBIT C

DISBURSEMENT REQUEST FORM

1. Community Facilities District No. 2021-1 of the City of Lake Elsinore (Tuscany Valley/Crest) ("CFD No. 2021-1") is hereby requested to pay from the EVMWD Facilities Fund established by the City Council of the City of Lake Elsinore (the "City") in connection with its CFD No. 2021-1 Series _____ Special Tax Bonds (Improvement Area __) (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 [Acquisition Facilities] [facilities relating to the EVMWD Charges]. 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.

3. Description of [Acquisition Facilities] [EVMWD Charges]:

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, SPT- AREP III Tuscany Associates, LLC and the Elsinore Valley Municipal Water District dated as of _____, 2021 (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 [Acquisition Facilities] [facilities relating to the EVMWD Charges] from CFD No. 2021-1, including the amounts to be paid under paragraph 4 above, will not exceed the maximum amount to be disbursed for [Acquisition Facilities] [facilities relating to the EVMWD Charges] under the Agreement.

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

By: _____

Name: _____

Title: _____

Date: _____

Request No. _____

CONCURRED BY:
