DRAFT: July 15, 2016

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

City of Calimesa
908 Park Avenue
Calimesa CA 92320

Attn: City Clerk

Space Above This Line for Recorder's Use
(Exempt from Recording Fees per Gov't Code § 6103)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE

CITY OF CALIMESA

AND

MESA VERDE RE VENTURES, LLC

FOR THE

MESA VERDE ESTATES PROJECT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into as _____, 2016 (the "Reference Date"), by and between the CITY OF CALIMESA, a California municipal corporation and general law city existing under the Constitution of the State of the California ("City"), and MESA VERDE RE VENTURES, LLC, a California limited liability company ("Developer"). City and Developer are occasionally referred to in this Agreement collectively as the "Parties." In consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. RECITALS.

A. California Government Code Sections 65864-65869.5 (the "Development Agreement Act") authorize City to enter into a binding development agreement for the development of real property within its jurisdiction with persons having legal or equitable interest in real property in order to:

(1) Ensure high quality development in accordance with comprehensive plans;

(2) Reduce uncertainty in the development approval process that might otherwise result in a waste of resources and discouragement of investment;

(3) Strengthen City's comprehensive planning process to provide for the most efficient use of public and private resources by encouraging private participation in the comprehensive planning process and reducing the economic cost of development;

(4) Assure developers of land that upon approval, they may proceed with their projects in accordance with defined policies, rules, regulations and conditions of approval; and

(5) Provide for the financing and/or construction of necessary public facilities.

B. In addition to the general purposes stated above, the following are among the considerations supporting this Agreement:

(1) This Agreement authorizes Developer to develop an approximately 1,492.4 acre property the majority of which is located within the City of Calimesa, the County of Riverside, State of California (the "Property"), as described in **Exhibit A**, with a mixture of commercial retail, single-family and multi-family residential uses, private and/or public parks and open space, as further defined in this Agreement.

(2) This Agreement will provide the Parties with: (a) a high quality development on the Property subject to this Agreement; (b) certainty in the type of development to be undertaken on the Property; and (c) the assurance of adequate public facilities to ensure the

good of the community regardless of City's legal authority to impose the requirements under constitutional or statutory authority.

(3) For City, this Agreement serves to provide for: (a) employment growth anticipated to result from the Development of the Property, both during construction and use; (b) an increase in tax revenues anticipated to result from the Development of the Property; (c) the achievement of the goals and directives of its General Plan; and (d) certain community benefit contributions, as set forth further herein.

(4) The development of new commercial facilities is an integral part of Developer's development plans for the Property. The facilities are expected to bring employment and generate sales tax revenue for City.

C. The Property that is the subject of this Agreement is approximately 1,492.4 acres in size, is generally bounded on the west by the open space, on the south by the open space including the Garden Air Wash, on the east by generally Interstate 10, and on the North by the County Line, and is further described on **Exhibit A** and depicted on **Exhibit B** attached to this Agreement. Developer has acquired legal or equitable interest in the Property for the development of the Property as provided in this Agreement.

D. The Property is subject to the Development Approvals and Land Use Regulations defined in Section 2 of this Agreement.

E. City and Developer desire to enter into a binding agreement for purposes of identifying: (i) the terms, conditions and regulations for the development of the Property; and (ii) Developer's obligations to make certain Community Benefit Contribution (defined in Section 5.E.) on the terms and conditions set forth in this Agreement.

F. Developer desires to develop the Property in accordance with the provisions of this Agreement, the Land Use Regulations (as defined herein) and those laws and regulations of other Agencies exercising jurisdiction over the Property.

G. Developer has applied for, and City has approved, this Agreement in order to create beneficial development of the Property and a physical environment that will conform to and complement City's goals, create development sensitive to human needs and values, facilitate efficient traffic circulation, and otherwise provide for the development of the Property in accordance with City's best interests.

H. City has reviewed the potential impacts and the various potential benefits to City of this Agreement and has concluded that this Agreement is in City's best interests.

I. The City Council has determined that this Agreement is consistent with City's General Plan including the goals and objectives thereof.

J. The following actions have been taken with respect to this Agreement and the Development:

(1) On _____, 2016, following a duly noticed and conducted public hearing on the Agreement and the proposed Specific Plan and Environmental Impact Report [Supplement/Addendum], the Planning Commission recommended that the Council approve this Agreement;

(2) On _____, 2016, after a duly noticed public hearing and pursuant to the California Environmental Quality Act (Cal. Pub. Resources Code, § 21000 *et seq.*) ("CEQA"), as amended, the City Council adopted Resolutions _____ and _____ certifying the Environmental Impact Report [Supplement/Addendum], adopting the Specific Plan Amendment;

(3) On _____, 2016, following a duly noticed public hearing, the City Council introduced Ordinance No. _____and on _____, 2016, held the second reading and adopted Ordinance No. _____ approving this Agreement, a copy of which is on file in the City Clerk's Office at City Hall, which ordinance includes the findings pertaining thereto, including those relating to the CEQA documentation for the Development and this Agreement's consistency with City's General Plan and each element thereof and any specific plans relating to the Property.

(4) All actions taken by City have been duly taken in accordance with all applicable legal requirements, including CEQA, and all other requirements for notice, public hearings, findings, votes and other procedural matters.

K. Pursuant to Section 65867.5 of the Development Agreement Act, the City Council has found and determined that: (i) this Agreement implements the goals and policies of City's General Plan and the Mesa Verde Specific Plan, provides balanced and diversified land uses, and imposes appropriate standards and requirements with respect to land development and usage in order to maintain the overall quality of life and the environment within City; (ii) the tentative map prepared for the subdivision included in this Agreement complies with the provisions of Government Code Section 66473.7; (iii) this Agreement is in the best interests of and not detrimental to the public health, safety and general welfare of City and its residents; (iv) adopting this Agreement is consistent with City's General Plan, and each element thereof, and the Mesa Verde Specific Plan, and constitutes a present exercise of City's police power; and (v) this Agreement is being entered into pursuant to and in compliance with the requirements of Government Code Sections 65867 and 65867.5 of the Development Agreement Act.

2. DEFINITIONS. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized when used in this Agreement. The defined terms include the following:

A. "*Agreement*" means this Development Agreement.

B. "*City*" means the City of Calimesa, a California general law city and municipal corporation.

C. "*City Clerk*" means the City Clerk of City.

D. "*City Council*" means the City Council of City.

E. "*City Manager*" means the City Manager of City.

F. "*Community Benefit Contribution*" or "CBC" means the payment described in Section 5 of this Agreement.

G. *"Developer*" means Mesa Verde Re Ventures, LLC and its subsidiaries and affiliates that are identified on the attached **Exhibit F**, and also where specified in this Agreement, successors in interest to all or any part of the Property.

H. "*Development*" means the improvement of the Property for the purposes of constructing structures, improvements and facilities on the Property to facilitate a mixture of commercial retail, single-family and multi-family residential uses, private and/or public parks and open space in accordance with the Development Approvals and Subsequent Development Approvals, including the maintenance, repair and replacement of any building, structure, improvement, landscaping or facility after its construction and completion on the Property.

I. "*Development Approvals*" means any and all permits, licenses, consents, approvals, rights and privileges, and other actions approved or issued by City previously in connection with the Development on the Property on or before the Effective Date, including but not limited to:

(1) General Plan Land Use Element map and text amendments;

(2) The Mesa Verde Estates Specific Plan Amendment (SP-04-02, February 2007, "2007 Specific Plan"), as further amended by the 2016 Mesa Verde Estates Specific Plan Amendment;

(3) City's Zoning Ordinance, subject to the provisions of Section 4.A.(2) of this Agreement; and

(4) Tentative tract map No. ___; and

(5) The Addendum to previously certified Environmental Impact Report No.___; and

All of the Development Approvals are on file in the City Clerk's Office.

J. "*Development Fees*" means and includes all fees charged by City in connection with the approval or issuance of permits for the development of property, including, without limitation: City's Development Impact Fees (General Government Facilities Fees, Streets and Traffic Facilities Fees, Storm Drain Fees, Library Fees, Fire and Police Fees, and Park Fees); the fees charged by City in connection with a development Property for the purpose of defraying all or a portion of the cost of mitigating the impacts of the Property and development of the public facilities related to development of the Property; and any similar governmental fees, charges and exactions required for the development of the Property. Development Impact Fees does not mean and excludes (1) processing fees and charges of every kind and nature imposed by City generally to cover the estimated actual costs to City of processing applications for Development Approvals;

and (2) fees established by Federal, State, County, and multi-jurisdictional laws and regulations that City is required to enforce as against the Property or the Development. The Development Impact Fees are listed on **Exhibit D**, which is attached hereto and incorporated by reference herein.

K. "*Development Requirement*" means any requirement of City in connection with or pursuant to any Development Approval for the dedication of land, the construction or improvement of public facilities, the payment of fees or assessments in order to lessen, offset, mitigate or compensate for the impacts of the Development on the environment, or the advancement of the public interest.

L. *"Effective Date"* means the date that this Agreement shall take effect as defined in Section 3.B. of this Agreement.

M. "*Land Use Regulations*" means all ordinances, resolutions, codes, rules, regulations and official written policies of City adopted and effective on the Effective Date governing the Development and use of the Property, including, without limitation, the permitted use of the Property, the density or intensity of use, the rate of development of land, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the design, improvement and construction standards and specifications applicable to the Development, and the Development Approvals. Land Use Regulations does not mean and excludes Development Impact Fees. Land Use Regulations are listed on **Exhibit __**.

N. *"Off-Site Improvements"* means the public improvements that are outside the boundaries of the Property.

O. "*Person*" means any natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust or any other legal entity, including governmental and quasi-governmental agencies, authorities, boards, bureaus, commissions, departments or other political subdivisions or political bodies.

P. "*Property*" means the real property described in **Exhibit A** and depicted on the Site Map in **Exhibit B**.

Q. "*Public Improvements*" means the streets, parks, infrastructure and other public facilities that are to be constructed and dedicated to City or other public entities and which are part of the proposed Development. Public Improvements include those improvements within the boundaries of the Development and Off-Site Improvements.

R. "*Reservation of Authority*" means the rights and authority excepted from the assurances and rights provided to Developer under this Agreement and reserved to City under Section 4.B.

S. *"Site Map"* means the drawing of the site in its condition as of the Effective Date, attached as **Exhibit B**.

T. "*Subsequent Development Approvals*" means any and all permits, licenses, consents, rights and privileges, and other actions approved or issued by City subsequent to the Effective Date in connection with the Development that do not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

U. "*Subsequent Land Use Regulations*" means any and all ordinances, resolutions, codes, rules, regulations and official written policies of City adopted and effective after the Effective Date governing development and use of the Property that do not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

V. "*Transfer*" means any lease, sale, encumbrance, assignment or other transfer of all or any portion of the Property or any interest therein.

W. "*Transferee*" means a Person that acquires an interest in the Property pursuant to a Transfer.

3. GENERAL TERMS OF THE DEVELOPMENT AGREEMENT.

Term. The term of this Agreement shall commence on the Effective Date and shall continue for fifteen (15) years thereafter the Effective Date (the "Term"), unless the Term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties to this Agreement after the satisfaction of all applicable public hearing and related procedural requirements. The Agreement shall be extended for an additional five (5) years so long as no uncured material default of this Agreement by Developer exists upon expiration of the initial Term.

A. Effective Date. This Agreement shall be effective, and the obligations of the Parties to this Agreement shall be effective on the date that Ordinance No. _____ approving this Agreement becomes effective (the "Effective Date"). The Parties shall approve an Operating Memorandum pursuant to Section 3.E.(4), confirming the Effective Date of the Agreement.

B. Binding Effect of Agreement. From and following the Effective Date, the Development, and City actions on applications for Subsequent Development Approvals affecting the Property, shall be subject to the terms and provisions of this Agreement. The provisions of this Agreement, to the extent permitted by law, constitute covenants that shall run with the Property for the benefit thereof, and the benefits and burdens of this Agreement shall bind and inure to the benefit of the Parties and all successors in interest to the Parties.

C. Ownership of Property. Developer has a legal or equitable interest in the Property and thus Developer is qualified to enter into and be a party to this Agreement under the Development Agreement Act.

D. Transfers and Assignments.

(1) Restrictions on Transfers. Developer shall not sell, assign, or otherwise transfer all or any portion of its interests in the Property together with all its right, title and interest in this Agreement, or the portion thereof which is subject to the transferred portion of the Property, to any Transferee until such time as the public and private improvements required by the Development Approvals and this Agreement have been accepted by the City unless the City has approved the transfer prior to its completion. City shall not unreasonably withhold or unreasonably delay its consent to the transfer provided that: (1) the Transferee has specifically assumed in writing the obligations, or a portion of the obligations of the Developer, to design, construct, install and finally complete the public and private improvements required by the Development Approvals and this Agreement in connection with the Transferred Property (unless Developer retains all such obligations, as discussed below); (2) the Transferee has the experience and capacity to complete the public and private improvements required by the Development Approvals and this Agreement; and (3) the Transferee has obtained replacement bonds, accepted by the City for the public and private improvements required by the Development Approvals and this Agreement (in which event, the City shall release the Developer's corresponding Public Improvement bonds). In the event of any sale, assignment, or other transfer pursuant to this Section, (i) Developer shall notify the City within twenty (20) days prior to the transfer of the name of the Transferee, together with the corresponding entitlements being transferred to such Transferee, if any, and (ii) the agreement between Developer and Transferee pertaining to such transfer shall provide that either Developer or the Transferee shall be liable for the performance of those obligations of Developer under this Agreement which relate to the Transferred Property, if any, or shall confirm that the Developer and all Transferees shall remain jointly liable for the design and construction of public and private improvements required by the Development Approvals and this Agreement in connection with the Transferred Property.

(2) Rights and Duties of Successors and Assigns. Any, each and all successors and assigns of Developer shall have all of the same rights, benefits, duties and obligations of Developer under this Agreement, except as otherwise provided in this Section 3.D.

(3) Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of this Section 3.D. shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and developed and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user in accordance with this provision. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document.

E. Amendment of Development Agreement.

(1) Initiation of Amendment. Any Party may propose an amendment to this Agreement. The Parties agree that it may be beneficial to enter into additional agreements or modifications of this Agreement in connection with the implementation of the separate components of the Development.

(2) Procedure. Except as set forth in Section 3.E.(4) below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement under Calimesa Municipal Code section 18.85.080(A) and the Development Agreement Act, as applicable.

(3) Consent. Except as otherwise provided in this Agreement and/or Calimesa Municipal Code sections 18.85.080(A), any amendment to this Agreement shall require both Parties' written consent. No amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by each Parties' duly authorized representatives.

(4) Operating Memoranda. Refinements and further development of the Development may demonstrate that changes are appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. If and when the Parties mutually find that changes, adjustments, or clarifications are appropriate to further the intended purposes of this Agreement, they may, unless otherwise required by law, effectuate the changes, adjustments, or clarifications without amendment to this Agreement through one or more operating memoranda mutually approved by the Parties. The operating memoranda may be approved on behalf of City by the City Manager, or the person designated in writing by the City Manager, and by any corporate officer or other person designated for the purpose in a writing signed by a corporate officer on behalf of Developer. After execution of an operating memorandum, it shall be attached to and incorporated into this Agreement as an addendum thereto. Unless otherwise required by law or by this Agreement, no changes, adjustments, or clarifications shall require prior notice or hearing, public or otherwise. An operating memorandum may not be used by the City Manager or Community Development Director as a means to avoid an amendment to the Specific Plan or to increase the total number of housing units specified in the Specific Plan or this Agreement.

F. Cancellation and Termination. This Agreement may be cancelled, in whole or in part, by mutual consent of the Parties or their successors in interest in accordance with Government Code Section 65867. Unless terminated earlier, pursuant to the terms of this Agreement, this Agreement shall automatically terminate and be of no further effect upon the expiration of the Term, including any extensions thereof. Termination of this Agreement, for any reason, shall not, by itself, affect any right or duty arising from entitlements or approvals set forth under the Development Approvals.

4. DEVELOPER'S RIGHTS AND LIMITATIONS REGARDING DEVELOPMENT OF THE PROPERTY.

A. Right to Develop.

(1) Right to Develop. Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Approvals and this Agreement.

(2) Permitted Uses. In addition to uses permitted under the Development Approvals, the Parties agree that the uses listed in the Mesa Verde Specific Plan as of the Effective Date are permitted and shall remain permitted uses for the Property.

(3) Maximum Density. The Developer agrees that the total number of housing units permitted under this Agreement and pursuant to the Amended Specific Plan shall not exceed 3,650. This is inclusive of any and all units provided by bonus provisions of State law, the Specific Plan, as well as any other source.

Furthermore, the number of lots in each lot size category (4,000's, 6,000's, 7,000's and 10,000's) shall be consistent with the previously approved 2007 Specific Plan with the exception of the 5,000 square foot lots and Developer's ability to provide more large lots, as further described below..

With relation to the 5,000 square foot lots:

- An average lot size of 5,000 square feet shall be allowed. For every lot below 5,000 square feet there will be a lot above 5,000 square feet therefore resulting in an average lot size of 5,000 square feet in this category.

- No individual lot in the 5,000 square foot category shall be below 4,500 square feet.

The previously approved 2007 Specific Plan permitted 3,450 units. Pursuant to this Agreement and the Amended Specific Plan total permitted units is 3,650. All of the added units (i.e. units 3,451 to 3,650) shall be 7,000 to 10,000 square foot lots. In addition, Developer shall have the flexibility to provide more large lots in the Project than the maximum number of these lots designated in the approved 2007 Specific Plan provided that the overall unit count for the Project does not exceed a total of 3,650 housing units (i.e., Developer may increase the number of large lots and decrease the number of smaller lots in the Project).

The 200 additional units include all potential school site (public institution) conversion lots. Any parcels currently designated as school sites that ultimately are not needed, as determined by Yucaipa-Calimesa Joint Unified School District, will be part of, and not in addition to, the 200 unit increase in density.

(4) Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the rate or timing of development, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to the Development, shall be those contained in the Development Approvals and those Land Use Regulations not inconsistent with the Development Approvals that were in full force and effect as of the Effective Date.

(5) Subsequent Development Approvals. City shall accept for processing, review and action all applications for Subsequent Development Approvals, and City staff shall use their reasonable efforts to process the applications in an expeditious manner, taking

into account City's staffing levels, and all requisite development fees shall be calculated and paid by Developer at such time as payment for the fees is due and payable, for all or a portion of the Property, except as otherwise set forth herein. Unless otherwise requested by Developer, City shall not, without good cause, amend or rescind any Subsequent Development Approvals respecting the Property after City has granted the same.

(6) Development in Accordance with Agreement and Applicable Law; Timing of Development. Developer shall commence and complete the Development in accordance with this Agreement (including, without limitation, the Land Use Regulations and the Development Approvals) and in compliance with all laws, regulations, rules, and requirements of all non-City governing entities with jurisdiction over the Property. Time is of the essence in respect to all provisions of this Agreement that specify time for performance; provided, however, that the foregoing may not be construed to limit or deprive a Party of the benefits of any grace period or use period allowed in this Agreement.

(7) Changes and Amendments. Although the Development will likely require Subsequent Development Approvals, the Development shall be in strict compliance with the Development Approvals unless the Development Approvals are modified through the amendment or memorandum process applicable to the specific Development Approval. The above notwithstanding, Developer may determine that changes are appropriate and desirable in the existing Development Approvals. In the event Developer finds that a change is appropriate or desirable, Developer may apply in writing for an amendment to prior Development Approvals to effectuate the change. City may use its sole and absolute discretion in deciding whether to approve or deny any amendment request; provided, however, that in exercising the foregoing sole and absolute discretion, City shall not apply a standard different than used in evaluating requests of other developers.

B. Reservation of Authority by City.

(1) *Limitations, Reservations and Exceptions*. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development:

a. Processing fees and charges of every kind and nature imposed by City generally to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals.

b. Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matters of procedure.

c. Changes adopted by the City Council in the California Building Code, California Residential Building Code, California Fire Code, California Plumbing Code, California Mechanical Code, or California Electrical Code, California Green Building Standards Code, California International Property Maintenance Code, California Energy Code, California Historical Building Code, California Existing Building Code, Uniform Housing Code,

California Administrative Code and Uniform Code for the Abatement of Dangerous Buildings and similar uniform codes as required by and in accordance with State law.

d. Rules, regulations and official policies governing permitted uses of the land, density, and design, improvement, and construction standards and specifications existing after the Effective Date that are not in conflict with the Development Approvals and this Agreement. A "conflict" shall exist if, among other things, a rule, regulation or policy is adopted which alters the rate, type, manner, density, timing or sequencing of the Development.

e. Rules, regulations and official policies governing permitted uses of the land, density, and design, improvement, and construction standards and specifications existing after the Effective Date that are in conflict with the Development Approvals, provided Developer has given written consent to the application of the rules, regulations and policies to the Development.

f. Federal, state, county and multi-jurisdictional laws and regulations that City is required to enforce as against the Property or the Development, whether or not the laws and regulations are in conflict with the Development Approvals.

g. Notwithstanding anything to the contrary in this Agreement, and subject to Section 5 below regarding fees, taxes, assessments and mitigation measures, City may apply City regulations (including amendments to the Land Use Regulations) adopted by City after the Effective Date, in connection with any Subsequent Development Approvals, or deny or impose conditions of approval on any Subsequent Development Approvals, if City determines that City's failure to make such application or to deny or impose conditions of approval on any Subsequent Development Approvals would place the residents or occupants of the Property or City's residents, or both, in a condition adverse to their safety or health, or both.

(2) *Future Discretion of City*. Notwithstanding any other provision of this Section 4.B., this Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Approvals, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of any Subsequent Land Use Regulations. A "conflict" shall exist if, among other things, a rule, regulation or policy is adopted which alters the rate, type, manner, density, timing or sequencing of the Development.

(3) *Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law*. In the event that federal, or state laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more of the provisions of this Agreement, the provisions of this Agreement shall be modified or suspended as may be necessary to comply with the federal or state laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with the laws or regulations and to the extent the laws or regulations do not render the remaining provisions impractical to enforce.

(4) *Intent*. Developer has reasonably entered into this Agreement and will proceed with the Development of the Property on the assumption that City has adequately provided for the public health, safety and welfare through the Land Use Regulations. In the event

that any future, unforeseen public health or safety emergency arises, City agrees that it shall attempt to address the emergency in such a way as not to impact the Development in accordance with the Development Approvals, and if that is not possible, to select that option for addressing the emergency that has the least adverse impact on the Development in accordance with the Development Approvals.

C. Regulation by Other Public Agencies. Other public agencies not subject to City's control may possess authority to regulate aspects of the Property and the Development and this Agreement does not limit the authority of other public agencies.

D. Timing of Development. Except as set forth in Agreement, regardless of any future enactment, by initiative, or otherwise, Developer may, in its discretion, develop the Property in one phase or in multiple phases at such times as Developer deems appropriate within the exercise of its subjective business judgment. City agrees that Developer may apply for and receive permits, maps, occupancy certificates and other entitlements to develop and use the Property at any time, provided that the application is made in accordance with this Agreement and the Land Use Regulations. Since the California Supreme Court held in *Pardee Construction Company v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties, it is the intent of City and Developer to cure any possible deficiency in this Agreement arising from the same legal infirmity by acknowledging and providing that the Developer shall have the right to develop the Development and construction on the Property in such order, at such rate, and at such times during the Term of this Agreement as the Developer deems appropriate within its subjective business judgment.

E. Vested Rights. By entering into this Agreement and relying thereon, Developer is obtaining the vested rights to proceed with the Development of the Property in accordance with the terms and conditions of this Agreement. By entering into this Agreement and relying thereon, City is securing certain public benefits that enhance the public health, safety and welfare, a partial listing of which benefits is set forth in Section 1 of this Agreement.

F. No Conflicting Enactments. Except as otherwise provided by this Agreement, neither the City Council nor any other City agency shall enact a rule, regulation, ordinance or other measure applicable to the Property that is inconsistent or conflicts with the terms of this Agreement.

(1) Moratorium. It is Developer's and City's intent that no moratorium or other limitation (whether relating to the all or part of the Development, or enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), development plan approvals, site plans, construction permits, occupancy certificates, or other entitlements for use approved, issued or granted within City, or portions of City, shall apply to the Development to the extent the moratorium or other limitation would restrict Developer's right to develop the Property as provided by this Agreement in such order and at the rate as Developer deems appropriate as limited or regulated by this Agreement. City shall reasonably cooperate with Developer in order to keep this Agreement in full force and effect. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to reasonably cooperate in defending the

action. In the event of any litigation challenging the effectiveness of this or any portion of this Agreement, this Agreement shall remain in full force and effect while the litigation, including any appellate review, is pending. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Development Approvals or to other development issues affecting the Property shall not delay or stop the development, processing, or construction of the Development, unless the third party obtains a court order preventing the activity.

(2) Consistency between this Agreement and Current Laws. In the event of any inconsistency between the Land Use Regulations, Development Approvals and/or this Agreement, the Development Approvals shall control over land uses, and this Agreement shall control over all other provisions, including but not limited to, permitted quantities and densities of land uses.

G. Term of Map(s) and Other Development Approvals. Pursuant to California Government Code Sections 66452.6(a) and 65863.9, the term of any tentative subdivision or parcel map that has been or in the future may be processed for all or any portion of the Property and the term of each of the Development Approvals shall be deemed extended without further required action for a period of time through the scheduled expiration of the Term of this Agreement, including any extensions thereof, as set forth in Section 3 of this Agreement, if the map or Development Approval would otherwise have expired prior thereto.

H. Amendments to Development Approvals. It is contemplated by City and Developer that Developer may, from time to time, seek amendments to one or more of the Development Approvals. Any amendments are contemplated by City and Developer as being within the scope of this Agreement as long as they are consistent with the Land Use Regulations and shall, upon approval by City, continue to constitute the Development Approvals as referenced in this Agreement. The Parties agree that any amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

5. DEVELOPMENT FEES.

A. Development Impact Fees. In no event shall Developer be responsible for payment of new categories or types of development impact fees created by the City following the Effective Date of this Agreement, except as required by State or Federal Laws. Notwithstanding the above, Developer acknowledges that the City is in the process of a DIF nexus study (2016 Study). Although the City has represented that no new fee categories are being contemplated, the Developer understands and acknowledges that the names of certain existing fee categories may change or certain existing fee categories may be split into more than one category. In addition, Developer acknowledges that as part of the 2016 Study, the Master Facilities Plan containing a specific list of improvements and facilities upon which the fees will be based is also being updated and the improvements and facilities in those lists may change from current Master Facility Plan lists. Therefore, subject to the provisions of this Section 5.A, the Developer agrees to be bound by the categories resulting from the 2016 Study.

B. The DIF and the DIF rates may be amended by the City from time to time, and the Developer is not vested to the DIF rates in effect at the time this Agreement becomes

effective. Further, the developer is not vested with respect to any fee imposed which is outside the authority of the City.

C. At the time Developer prepays certain DIF as required under this Agreement (in 5.C.(1) below) the rates in effect at the time of prepayment shall apply. No prepayments shall be made except as expressly stated in this Agreement.

(1) The DIF includes a General Government Facilities Fee ("GGFF") and a Library Facilities Fee ("LFF"). Developer shall prepay the Development's GGFF and LFF obligations as set forth below, which prepayments, when combined with the remaining GGFF and LFF payments, shall fully satisfy the Development's off-site obligations regarding the payment of the GGFF and LFF. Prepayment GGFF and LFF paid by Developer in connection with the Development is intended to be used by the City for design, engineering, and/or construction of the new City Hall and library center (the "Civic Enrichment Center").

Developer will make a prepayment in the lump sum amounts of one million seven hundred ninety five thousand one hundred dollars ($1,795,100) for the GGFF and one million two hundred forty two thousand nine hundred fifty two dollars ($1,242,952) for the LFF (collectively, the "GGFF/LFF Prepayment") when Developer has requested issuance a certificate of occupancy for the 1,373rd single-family residential unit in the Development (excluding model units). The Developer shall receive credit toward future payment of GGFF/LFF on the number of units satisfied by the prepayment based on the DIF rate in effect at time of prepayment.

(2) The DIF also includes a Street and Traffic Facilities Fee ("STFF"). Developer shall prepay a portion of its STFF obligation as set forth below, which prepayments shall be used for the development of Roberts Road.

a. Developer shall pay a lump sum amount of one million one hundred sixty thousand dollars ($1,160,000) at the time Developer submits a formal application for approval by the City of the first phased final subdivision map for the Development. This payment shall be used by the City for design and engineering of Roberts Road and to begin rights-of-way acquisitions.

b. Developer shall pay an additional lump sum amount of one million seven hundred thousand dollars ($1,700,000) upon recordation of the first phased final subdivision map for the Development. This payment shall be used by the City for the completion of rights-of-way acquisitions.

c. Developer shall pay an additional lump sum amount three million six hundred thousand dollars ($3,600,000) upon issuance of the first certificate of occupancy for a residential unit in the Development, excluding model units. This payment shall be used by the City for construction and completion of Roberts Road.

d. Upon completion of the Roberts Road, any unused amounts in items (a) through (c) above shall be placed in the City's STFF fund and used in accordance with the City's Development Impact Fee Program, with priority being given to improvements that

benefit the Development, unless the City determines that conditions require that the funds be used for another project.

e. Developer shall receive credit toward future payment(s) of STFF based on Developer's prepayment. Such credit shall be applied toward the number of units satisfied by the prepayment based on the STFF rate in effect at the time of the prepayment.

D. TUMF Fees. The TUMF adopted pursuant to the Western Riverside County Transportation Uniform Mitigation Fee Program Ordinance of 2009, as codified in Chapter 18.105 ("Western Riverside County Transportation Uniform Mitigation Fee Program") ("TUMF Program") of Title 18 ("Zoning, Land Use and Development Regulations") of the Calimesa Municipal Code, shall be imposed upon the Development within the Property at the issuance of certificates of occupancy for each unit at the rate in effect as of the date of occupancy certification. Developer shall be entitled to execute a separate TUMF Credit Agreement (or agreements, as the case may be) with the City for Developer constructed off-site required improvements that are contained in the TUMF network. However, the Developer must adhere to all TUMF Credit Agreement requirements including but not limited to the fee expenditure requirement (cash flow) and the Western Riverside Council of Governments' Administrative Plan. Credits shall be applied to both County Line Road Interchange and Sandalwood Interchange, with priority given to County Line Road Interchange.

Developer shall be entitled to credits as are available pursuant to the terms of the TUMF Program and the Parties shall enter into a TUMF Program credit agreement (or agreements), which the Parties agree shall be entered into by the Parties concurrent with approval of the first tentative subdivision map covering a portion of the Development (not including the master (Development-wide) tentative map), for Developer constructed off-site required improvements that are contained in the TUMF network, including but not limited to the County Line Road interchange improvements and the Sandalwood Interchange improvements discussed below. The TUMF Program credit agreement shall be in a form substantially consistent with **Exhibit I** attached hereto. In the event the Parties have used their best good faith efforts to enter into a TUMF Program credit agreement but are unable to do so concurrent with the approval of the first subdivision map covering a portion of the Development (excluding the master (Development-wide) tentative map) due to circumstances beyond the Parties' control, the City's consideration of the tentative map shall not be delayed or withheld, and the Parties will enter into such agreement(s) prior to issuance of the first Final Map for the Project.

The Parties agree that the County Line Road interchange improvements and the Sandalwood Interchange improvements are TUMF eligible facilities. The Parties further acknowledge that the City is pursuing various grant opportunities to help fund the County Line Road interchange improvements, and that if the City is successful in obtaining one or more grants for this purpose, it may be necessary for Developer to prepay certain TUMF obligations. The amount(s) and timing of such prepayment(s), if any, shall be negotiated by the Parties and memorialized in the TUMF Program credit agreement (or agreements) discussed above.

The Developer understands and agrees that the Developer is required to mitigate all traffic impacts attributable to the Development regardless of whether or not TUMF obligations are sufficient to

mitigate these impacts. Furthermore, if the TUMF eligible mitigation costs are less than the required TUMF obligations, the Developer shall pay the greater amount.

E. MSHCP Fees. The MSHCP fee adopted pursuant to the Western Riverside County, Regional Conservation Authority Program, as codified in Chapter 16.05 of the Calimesa Municipal Code, shall be imposed upon the Development within the Property at the rate in effect as of the date of issuance of each construction permit for the Property. Developer shall be entitled to credits as might be available pursuant to the terms of the MSHCP fee or any MSHCP fee credit agreement entered into by the City and approved by the Western Riverside County Regional Conservation Authority.

F. Application/Processing Fees. As needed to process Subsequent Development Approvals, Developer shall pay the application and processing fees customarily imposed on the type of entitlement and/or permit sought at the rate, and in the amount, imposed by City pursuant to the fee schedule, resolution or ordinance in effect at the time the application is deemed complete and accepted by City for action, which fees are designed to reimburse City's expenses attributable to processing the applications for Subsequent Development Approvals. As set forth further in Section 8.B. below, City staff shall work cooperatively with Developer to process all Subsequent Development Approvals.

G. Community Benefit Contributions / Development Agreement Fees.

In consideration of the benefits received by Developer pursuant to the terms of this Agreement, Developer shall pay to City a Community Benefit Contribution ("CBC") in the amount of Five Hundred dollars ($500.00) per single-family residential dwelling unit constructed within the Development. The CBC shall be paid on a per-unit basis upon issuance of certificate of occupancy for each applicable residential unit.

In addition, Developer shall pay a Development Agreement Fee ("DA Fee") in the amount of five hundred thousand dollars ($500,000) for the Development. The DA Fee shall be in addition to the CBC, and shall be in addition to all applicable administrative, application and processing fees in connection with the Development Approvals and this Agreement as set forth in Section 5.D. above. The DA Fee shall be paid as follows:

(1) Two hundred thousand dollars ($200,000) within five (5) business days after all applicable appeal and challenge periods (defined as 90 days if the City files a Notice of Determination in conjunction with the adoption of this Agreement) have expired for a third party to bring a legal challenge, lawsuit, or claim seeking to overturn or challenge the City's approval of the Development Approvals (or, in the event a legal challenge, appeal, claim or lawsuit is filed seeking to challenge or overturn one or more of the Development Approvals, the DA Fee shall become due and payable within five (5) business days of resolution of such legal challenge, appeal, claim or lawsuit is fully resolved in Developer's favor);

(2) two hundred thousand dollars ($200,000) on or before the first anniversary of the Effective Date of this Agreement; and

(3) one hundred thousand dollars ($100,000) on or before the second anniversary of the Effective Date of this Agreement.

H. Imposition of New Fees, Taxes, Assessments or Mitigation Measures. City shall not, without the prior written consent of Developer, impose any additional fee, Development Fees, impact fee, tax, assessment or mitigation measure on the Development or Property or any portion thereof as a condition to the implementation of the Development, including but not limited to as a condition to the approval of Subsequent Development Approvals that are consistent with the Development, except such fees, Development Fees, impact fees, taxes, assessments and mitigation measures as are expressly described in or required by this Agreement, environmental impact report number __ and Addendum number __.

I. Reimbursement and Credit.

(1) Developer shall be entitled to reimbursement for any portion of Developer's prepayment for design, engineering, and/or construction of off-site Roberts Road that is in excess of the Project's or Developer's total Street DIF obligation, as provided in this Section. Developer shall be entitled to reimbursement for such excess prepayment, but only to the extent that the City actually receives or collects fees, assessments or exactions from other benefitting projects within a period of ten (10) years from the date the fee was prepaid by Developer, and only in the proportionate amount that Developer prepaid for off-site Roberts Road improvements in excess of total Street DIF obligation based on the amount of the City's DIF for Roberts Road at the time of Developer's prepayment..

(2) The Developer may apply for and the City shall consider an in-lieu fee credit against any Development Fees, for and equal to the cost of improvements and/or dedications made by the Developer, or funded by any Public Financing Mechanism (as defined in Section 7.H. below), including the Property, and for which the fees would otherwise be imposed in accordance with City ordinances and resolutions; provided, however, that such in lieu fee credit shall not exceed the amount established by the City's Development Impact Fee program for construction of such improvements and/or dedications. City agrees to consider using any fees paid with respect to the Development to fund improvements which benefit the Development, to the fullest reasonable extent available and applicable under the law.

a. To the extent City imposes DIFs, related to park purposes and/or park facilities, including but not limited to under Government Code section 66477, *et seq*. (the Quimby Act), Developer shall receive a dollar-for-dollar in lieu fee credits against such fees for land dedicated by Developer for park purposes (supported by an appraisal prepared by an MAI certified appraiser), and for the direct and indirect cost of improvements constructed or cause to be constructed by Developer on such land, provided such improvements meet the following definition for an "active" park: provides a variety of recreational opportunities for all ages and interests that includes, but is not limited to fitness and wellness opportunities, organized sport facilities, permanent restrooms, space for organized and large participation events, lighting, and is open to the public.

The City will not consider fee credits for landscaping strips adjacent to streets, unimproved open space, trails, or privately owned park facilities.

6. INTENTIONALLY OMITTED.

7. DEVELOPER'S OBLIGATIONS

A. Inclusionary Housing. Developer recognizes that Calimesa Municipal Code Chapter 18.130, Inclusionary Housing, is included within the Land Use Regulations governing the Development even though the provisions of the chapter are temporarily suspended, as set forth further in Municipal Code Section 18.130.130. In the event the chapter becomes effective and no longer suspended, notwithstanding the provisions set forth in Chapter 18.130, Developer may fully satisfy its obligation to provide affordable housing under Chapter 18.130 by complying with the provisions contained therein.

B. Developer's Obligations to Construct Public Improvements. Developer shall, at its sole cost and expense, design, construct, install and finally complete the Public Improvements as described in this Agreement, the conditions of approval for Tentative Tract Map No. __, and the Mesa Verde Specific Plan. The design, construction, installation and final completion of the Public Improvements shall be in conformance with City standards in effect as of the date of this Agreement and Improvement Plans approved by the City Engineer. Except as otherwise provided in this Agreement, the Public Improvements shall be completed at such time as set forth in the Development Approvals for the Development on the Property. City and Developer shall enter into City's standard subdivision improvement agreement, including surety bonds, or an applicable modification thereof, for the completion of the Public Improvements.

C. Interchange/Street Improvements. City shall construct the improvements to Roberts Road from County Line Road to the north Property boundary. Developer shall pay certain costs related to design, right-of-way acquisition, and construction of improvements for the Roberts Road improvements, as set forth further in Section 5.C.(2) above. Developer's payment and pre-payment of the STFF, as set forth further in Section 5.C.(2), is intended to fully satisfy the Development's off-site impacts to Roberts Road and its obligations for off-site Roberts Road improvements.

D. Maintenance of Improvements. Responsibility for the ongoing maintenance of Public Improvements provided by Developer pursuant to this Agreement shall be apportioned between the Parties in accordance with the terms of this Section 7.D.

(1) Developer Operations and/or Maintenance Responsibilities. Developer, or its successors or assigns (including but not limited to one or more master associations and/or sub associations) shall operate and/or maintain all natural open space, trails, public and private parks, right-of-way landscaping and street lighting, hardscape (e.g. monuments), walls, fences, lighting, storm drains not accepted and maintained by RCFC&WCD, basins not accepted and maintained by RCFC&WCD, manufactured slopes, and fuel modifications areas on the Property.

E. Fire Facilities. Developer shall pay any applicable Fire Facilities in-lieu fees that are in place at the time this Agreement becomes effective. Such payment shall be made on a per-unit basis upon issuance of certificate of occupancy for each unit, and shall be paid at the rate in effect at the time of payment. In the event the City elects to participate in or utilize an

alternative funding mechanism (such as the Statewide Community Infrastructure Program (SCIP)) to fund the design, engineering, and/or construction of the fire facilities necessary to serve the Development, in whole or in part, subject to the Development's availability of bonding capacity, as determined by an independent bonding consultant. Developer agrees to cooperate in the formation and participation in any such alternative funding mechanism, and shall receive credits to be applied to the Development's Fire Facilities impact fee obligation in an amount that is proportionate to the Development's obligation.

F. Easements. City shall grant the easements over City property as are reasonably needed for the development of the Property provided the easements do not unreasonably impede or interfere with public services provided on the properties. Developer agrees to grant to City the easements over its Property as are reasonably needed for the construction and maintenance of public improvements, except to the extent the easements would have a material adverse economic effect on the Development. The grants shall be at no additional cost to Developer or City.

G. Public Safety. Developer shall be required to be a part of the existing Citywide Public Safety CFD for fire, police and paramedic services, provided, however, that in no event shall Developer be responsible for any costs, fees, taxes or assessments that do not directly benefit the Development and result from the Development's direct impacts.

H. Financing Mechanisms.

(1) Developer may, from time to time, request City to establish one or more assessment, landscaping and lighting, maintenance and/or community facilities districts ("Public Financing Mechanism") to finance improvements, infrastructure, public facilities, services and/or fees that may be required in connection with the Development, including but not limited to issuing bonds, subject to applicable state and federal law and to the Land Use Regulations. Such requests will be considered by the City.

(2) If the formation or establishment of any Public Financing Mechanism is requested by Developer, and therefore considered by the City, Developer shall bear the full cost of creating any and all Public Financing Mechanisms, as set forth further in **Exhibit J**, the City's Goals and Policies for District Formation. Subject to the availability of funds from the Public Financing Mechanism, Developer may be reimbursed by the Public Financing Mechanism for the fees so paid. To the extent of any conflict between this Agreement and **Exhibit J**, this Agreement shall prevail.

I. Joint Facilities; Agreements. The Parties acknowledge that other governmental entities providing services to the Property may request that the City enter into a Joint Community Facilities Agreement with the entity(ies), as provided for under Government Code section 53316.2, for the financing of the Public Improvements, other City facilities and services, and the facilities of the other governmental entity(ies), in connection with the creation of a community facilities district by such other governmental entity(ies). Such entities may include, but are not limited to, the Yucaipa Calimesa Joint Unified School District and the Yucaipa Valley Water District. The Parties shall work together in good faith to accommodate such financing, and the City shall negotiate in good faith with the entity(ies) on such Joint Community Facilities

Agreements. Additionally, the Parties shall work together in good faith to accommodate the joint use by private and/or governmental entities of facilities located on public parks.

8. CITY'S OBLIGATIONS.

A. Property Approvals Independent. All approvals required for the Property that may be or have been granted, and all land use entitlements or approvals generally that have been issued or will be issued by City with respect to the Property, constitute independent actions and approvals by City. If any provision of this Agreement, or the application of any provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid or unenforceable, or if this Agreement terminates for any reason, then the invalidity, unenforceability or termination of the provision or application shall not affect the validity or effectiveness of any the Development Approvals or other land use approvals and entitlements. In such cases, the approvals and entitlements will remain in effect pursuant to their own terms, provisions, and the conditions of approval. It is understood by the Parties to this Agreement that pursuant to existing law, if this Agreement terminates or is held invalid or unenforceable as described above, the approvals and entitlements shall not remain valid for the Term, but shall remain valid for the term(s) of the approvals and entitlements.

B. City Cooperation. City staff shall work cooperatively with Developer to assist in coordinating the processing and consideration of all necessary permits, entitlements and approvals, including but not limited to Subsequent Development Approvals. To the extent City or City's designee is unable to process and consider permits, entitlements and approvals in a timeframe acceptable to the Developer., Developer may request, and the City will consider, the hiring of an outside contractor to assist City or City's designee in the processing and consideration of all necessary permits, entitlements and approvals. If approved, the City shall contract for those services at the Developer's sole expense.

9. INDEMNIFICATION.

A. Except to the extent caused by the gross negligence or intentional misconduct by the City or its officials, employees, agents, attorneys, and/or contractors (collectively, the "City's Affiliated Parties"), Developer agrees to indemnify, defend and hold harmless City and its agents, officers, contractors, attorneys and employees ("Indemnified Parties") from and against any claims or proceeding against the Indemnified Parties to set aside, void or annul the approval of this Agreement or any Development Approvals or Subsequent Development Approvals pursuant to this Agreement. Notwithstanding the provisions of this Agreement, Developer's obligation pursuant to this Section 9.A. is not a benefit or burden running with the land and shall not be assigned to any person without the prior, express written consent of City. Developer's duties under this Section 9.A. are solely subject to and conditioned upon the Indemnified Parties written request to Developer to indemnify the Indemnified Parties. Developer shall deposit the expected costs of defense, as reasonably determined by the City Attorney, with City within five (5) business days of notice from City of the claim and shall add to the deposit within five (5) business days from City's request. Without in any way limiting the provisions of this Section 9.A., the Parties agree that this Section 9 shall be interpreted in accordance with the provisions of California Civil Code Section 2778 in effect as of the Effective Date. Developer's

indemnity obligations set forth in this Section 9.A. shall survive the termination or expiration of this Agreement.

B. Notwithstanding Section 9.A., and as a separate and distinct obligation of Developer, except to the extent caused by the gross negligence or intentional misconduct of City or one or more of the City's Affiliated Parties, Developer agrees to indemnify, defend and hold harmless the Indemnified Parties from and against each and every claim, action, proceeding, cost, fee, legal cost, damage, award or liability of any nature arising from alleged damages caused to third parties and alleging that the Indemnified Parties is or are liable therefor as a direct or indirect result of City's approval of this Agreement or any Development Approvals or Subsequent Development Approvals pursuant to this Agreement. Developer's duties under this Section 9.B. are solely subject to and conditioned upon the Indemnified Parties written request to Developer to indemnify the Indemnified Parties. Developer shall deposit the expected costs of defense, as reasonably determined by the City Attorney, with City within twenty-one (21) calendar days of notice from City of the claim and shall add to the deposit within twenty-one (21) calendar days from City's request. Without in any way limiting the provisions of this Section 9.B., the Parties agree that this Section 9.B. shall be interpreted in accordance with the provisions of California Civil Code Section 2778 in effect as of the Effective Date. Developer's indemnity obligations set forth in this Section 9.B. shall survive the termination or expiration of this Agreement.

10. PERIODIC REVIEW OF COMPLIANCE WITH AGREEMENT.

A. Periodic Review. City and Developer shall review this Agreement at least once every 12-month period from the Reference Date. City shall notify Developer in writing of the date for review at least thirty (30) calendar days prior thereto. The periodic review shall be conducted in accordance with Government Code Section 65865.1.

B. Good Faith Compliance. During each periodic review, Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. Developer agrees to furnish reasonable evidence of good faith compliance as City, in the exercise of its reasonable discretion, may require. If requested by Developer, City agrees to provide to Developer, a certificate that Developer, or a duly authorized Transferee, is in compliance with the terms of this Agreement, provided Developer reimburses City for all reasonable and direct costs and fees incurred by City with respect thereto.

C. Failure to Conduct Annual Review. The failure of City to conduct the annual review shall not be a default under this Agreement. Further, Developer shall not be entitled to any remedy for City's failure to conduct this annual review.

D. Initiation of Review by City Council. In addition to the annual review, the City Council may at any time initiate a review of this Agreement by giving written notice to Developer. Within thirty (30) calendar days following receipt of the notice, Developer shall submit evidence to the City Council of Developer's good faith compliance with this Agreement and the review and determination shall proceed in the same manner as provided for the annual review. The City Council shall initiate its review pursuant to this Section 10.D. only if it has probable cause to believe City's general health, safety or welfare is at risk as a result of specific acts or failures to act by Developer.

E. Administration of Agreement. Any final decision by City staff concerning the interpretation and administration of this Agreement and development of the Property in accordance with this Agreement may be appealed by Developer to the City Council, provided that the appeal shall be filed with the City Clerk within ten (10) business days after Developer receives written notice that the staff decision is final. The City Council shall render its decision to affirm, reverse or modify the staff decision within thirty (30) calendar days after the appeal was filed. The decision of the City Council as to the administration of this Agreement shall be final and is not appealable. The foregoing notwithstanding, breaches of this Agreement are subject to judicial relief as provided in this Agreement.

F. Availability of Documents. If requested by Developer, City agrees to provide to Developer copies of any documents, reports or other items reviewed, accumulated or prepared by or for City in connection with any periodic compliance review by City, provided Developer reimburses City for all reasonable and direct costs and fees incurred by City with respect thereto. City shall respond to Developer's request on or before ten (10) business days have elapsed from City's receipt of the request.

11. DEFAULT; REMEDIES; DISPUTE RESOLUTION.

A. Notice of Default. In the event of failure by a Party to substantially perform any material term or provision of this Agreement, the non-defaulting Party shall have those rights and remedies provided in this Agreement, provided that the non-defaulting Party has first provided to the defaulting Party a written notice of default in the manner required by this Section 11 identifying with specificity the nature of the alleged default and the manner in which the default may satisfactorily be cured.

B. Cure of Default. Upon the receipt of the notice of default, the alleged defaulting Party shall promptly commence to cure, correct or remedy the identified default at the earliest reasonable time after receipt of the notice of default and shall complete the cure, correction or remedy of the default not later than ten (10) calendar days after receipt of notice thereof if the breach of this Agreement involves the payment of money, or not later than thirty (30) calendar days after receipt of notice thereof if the breach of this Agreement does not involve the payment of money; provided, however, that if the breach may not reasonably be cured within the thirty (30) calendar day period, then a default shall exist only if the cure of the breach is not commenced within the thirty (30) calendar day period or thereafter is not diligently prosecuted to completion.

C. Developer's Remedies. Due to the size, nature and scope of the Property and its development, it will not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After the implementation, Developer may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. Developer has invested significant time and resources and performed extensive planning and processing of the Development of the Property in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Development in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money that would adequately compensate Developer for its efforts. For the above reasons, City and Developer agree that damages would not be an adequate remedy if City fails to carry out its obligations under this Agreement and that Developer shall have the right to seek and obtain

specific performance as a remedy for any breach of this Agreement. Moreover, City would not have consented to this Agreement if it were to be subject to damages for breach of this Agreement. Therefore, Developer specifically agrees that it has no authority under this Agreement or otherwise to seek monetary damages against City for any breach of this Agreement by City, and agrees not to seek monetary damages against City for breach of this Agreement.

D. City Remedies. In the event of an uncured default by Developer of the terms of this Agreement, City, at its option, may institute legal action in law or in equity to cure, correct or remedy the default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement by specific performance as its sole and exclusive remedy. Furthermore, City, in addition to or as an alternative to exercising the remedies set forth in this Section 11.D., in the event of a material default by Developer, may give notice of its intent to terminate or modify this Agreement pursuant to this Agreement and/or the Development Agreement Act, in which event the matter shall be scheduled for consideration and review by the City Council in the manner set forth in the Development Agreement Act.

E. Judicial Review. Based on the foregoing, in the event Developer judicially (including by way of a reference proceeding) challenges the application of a Subsequent Land Use Regulation as being in violation of this Agreement and as not being a land use regulation adopted pursuant to the Reservation of Authority, Developer shall bear the burden of proof in establishing that the rule, regulation or policy is inconsistent with the Land Use Regulations, the Development Approvals, or both and City shall thereafter bear the burden of proof in establishing that the rule, regulation or policy was adopted pursuant to and in accordance with the Reservation of Authority and was not applied by City in violation of this Agreement.

F. Local, State and Federal Laws. Developer and its contractors shall carry out the design and construction of all private improvements on the Property and all Public Improvements in conformity with all applicable laws, including, without limitation, all applicable federal, state and local occupation, employment, prevailing wage, safety and health laws, rules, regulations and standards. Developer agrees to indemnify, defend and hold the Indemnified Parties (as defined in Section 9 of this Agreement) harmless from and against any cost, expense, claim, charge or liability relating to or arising directly or indirectly from any breach by or failure of Developer or its contractor(s) or agents to comply with the laws, rules, regulations or standards. Developer's indemnity obligations set forth in this Section 11 shall survive the termination or expiration of this Agreement.

12. MORTGAGEE PROTECTION; CERTAIN RIGHTS TO CURE.

A. Encumbrances on the Property. This Agreement shall not prevent or limit Developer from encumbering the Property or any portion thereof or any improvements thereon with any mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance ("Mortgage") in which the Property, or a portion thereof or interest therein, is pledged as security, and contracted for in good faith and fair value in order to secure financing with respect to the construction, development, use or operation of the Property.

B. Mortgagee Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat,

render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a holder of a beneficial interest under a Mortgage, or any successor or assignee to the holder ("Mortgagee"), whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise, shall be subject to all of the terms and conditions of this Agreement.

C. Mortgagee Not Obligated. No Mortgagee will have any obligation or duty under this Agreement to perform the obligations of Developer or other affirmative covenants of Developer under this Agreement, or to guarantee performance. In addition, the Mortgagee shall have no right to develop or operate the Property without fully complying with the terms of this Agreement, and to the extent that any covenant to be performed by Developer is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance under this Agreement.

D. Notice of Default to Mortgagee; Right of Mortgagee to Cure. City shall, upon written request to City, deliver to each Mortgagee a copy of any notice of default given to Developer under the terms of this Agreement, at the same time the notice of default is provided to Developer. The Mortgagee shall have the right, but not the obligation, to cure, correct or remedy the default, within sixty (60) calendar days after the receipt of the notice from City for monetary defaults, or within sixty (60) calendar days after Developer's cure period has expired for non-monetary defaults, or, for the defaults that cannot reasonably be cured, corrected or remedied within the period, the Mortgagee may cure, correct or remedy the default if the Mortgagee commences to cure, correct or remedy the default within the sixty (60) calendar day period, and continuously and diligently prosecutes the cure to completion. If the default is of a nature that can only be remedied or cured by the Mortgagee upon obtaining possession of the Property, the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through foreclosure, a receiver or otherwise, and shall be permitted thereafter to remedy or cure the default within the time as is reasonably necessary to cure or remedy the default but in no event more than ninety (90) calendar days after obtaining possession. If a default cannot, with diligence, be remedied or cured within the ninety (90) calendar day period, then the period shall be extended to permit the Mortgagee to effect a cure or remedy so long as Mortgagee commences the cure or remedy during the ninety (90) calendar day period, and thereafter diligently pursues the cure to completion.

13. ESTOPPEL CERTIFICATES.

A. Estoppel Certificates.

(1) Written Request. Either Party may at any time deliver written notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating: (1) this Agreement is in full force and effect and is a binding obligation of the Parties; (2) this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and (3) no default in the performance of the requesting Party's obligations under this Agreement exists or, if a default does exist, the nature and amount of any default.

(2) Thirty (30) Days to Respond. A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) calendar days after receipt of the request.

(3) Authorized Signatories. The City Manager or any person designated by the City Manager may sign the Estoppel Certificates on behalf of City. Any officer of Developer may sign on behalf of Developer.

(4) Reliance. An Estoppel Certificate may be relied on by successors, assignees and mortgagees.

(5) Reimbursement. In the event that one Party requests an Estoppel Certificate from the other, the requesting Party shall reimburse the other Party for all reasonable and direct costs and fees incurred by the Party with respect thereto.

(6) Failure to Provide Estoppel Certificate. Failure by a Party to provide an Estoppel Certificate within thirty (30) calendar days after receipt of the request therefor shall be deemed confirmation that this Agreement is in full force and effect, has not been amended or modified either orally or in writing and that no defaults in the performance of the requesting Party's obligations under this Agreement exist.

14. MISCELLANEOUS.

A. Notices. All notices permitted or required under this Agreement must be in writing and shall be effected by: (i) personal delivery; (ii) first class mail, registered or certified, postage fully prepaid; or (iii) reputable same-day or overnight delivery service that provides a receipt showing date and time of delivery, addressed to the following Parties, or to such other address as any Party may from time to time designate in writing in the manner as provided in this Agreement:

To City:	City of Calimesa 908 Park Avenue Calimesa CA 92320 Attn: City Manager
With a copy to:	Richards, Watson & Gershon 355 South Grand Avenue, 40th Floor Los Angeles, CA 90071 Attn: Kevin G. Ennis, Esq.
To Developer:	Mesa Verde Re Ventures, LLC 2 Park Plaza, Suite 1250 Irvine, California 92614 Attn: _____

With a copy to: Jackson Tidus
2030 Main Street, 12th Floor
Irvine, California 92614
Attn: Gregory P. Powers, Esq.
Email: gpowers@jacksontidus.law

Any written notice, demand or communication shall be deemed received immediately if personally delivered or delivered by same-day or overnight delivery service, and shall be deemed received on the third (3rd) business day from the date it is postmarked if delivered by registered or certified mail.

B. Force Majeure. In addition to specific provisions of this Agreement, performance by either Party under this Agreement shall not be deemed to be in default where delays or failures to perform are due to the elements, fire, earthquakes or other acts of God, strikes, labor disputes, lockouts, acts of the public enemy, riots, insurrections, or governmental restrictions imposed or mandated by other governmental entities. City and Developer may also extend times of performance under this Agreement in writing. Notwithstanding the foregoing, Developer is not entitled pursuant to this Section 14.B. to an extension of time to perform because of past, present or future difficulty in obtaining suitable construction financing or permanent financing for the Development, or because of economic or market conditions.

C. Binding Effect. This Agreement, and all of the terms and conditions of this Agreement, shall be binding upon and inure to the benefit of the Parties, any subsequent developer of all or any portion of the Property or the Property, and their respective assigns, heirs or successors in interest, whether or not any reference to this Agreement is contained in the instrument by which the Person acquired an interest in the Property. The provisions of this Agreement shall constitute mutual covenants that shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties to this Agreement and all successors in interest to the Parties to this Agreement for the term of this Agreement.

D. Independent Entity. In entering into and performing this Agreement, each of Developer and City is acting as an independent entity and not as an agent of the other in any respect.

E. Agreement Not to Benefit Third Parties. This Agreement is made for the sole benefit of the Parties, and no other person shall be deemed to have any privity of contract under this Agreement nor any right to rely on this Agreement to any extent for any purpose whatsoever, nor have any right of action of any kind on this Agreement nor be deemed to be a third party beneficiary under this Agreement.

F. Nonliability of City Officers and Employees. No official, officer, employee, agent or representative of City, acting in his/her official capacity, shall be personally liable to Developer, or any successor or assign, for any loss, costs, damage, claim, liability, or judgment, arising out of or connection with this Agreement, or for any act or omission on the part of City.

G. Covenant against Discrimination. Developer and City covenant and agree, for themselves and their respective successors and assigns, that there shall be no discrimination against, or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, or any other impermissible classification, in the performance of this Agreement. Developer shall comply with the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 *et seq.*).

H. No Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and referring expressly to this Section 14.H. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Agreement shall impair any right or power or be construed to be a waiver thereof, except as expressly provided in this Agreement. No waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be construed or deemed a waiver of any succeeding breach or nonperformance of the same or other covenants and conditions of this Agreement.

I. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, to the extent that the invalidity or unenforceability does not impair the application of this Agreement as intended by the Parties.

J. Construction. This terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, the masculine gender includes the feminine and vice versa, "or" is not exclusive, "includes" and "including" are not limiting, "shall," "will" or "agrees" are mandatory, and "may" is permissive.

K. Recordation. This Agreement shall be recorded by City with the County Recorder of Riverside County within the period required by California Government Code Section 65868.5. Amendments approved by the Parties, and any cancellation or termination of this Agreement, shall be similarly recorded.

L. Captions and References. The captions of the sections of this Agreement are solely for convenience of reference, and shall be disregarded in the construction and interpretation of this Agreement. Reference in this Agreement to a section or exhibit are the sections and exhibits of this Agreement.

M. Time. Time is of the essence in the performance of this Agreement and for each and every term and condition of this Agreement as to which time is an element.

N. Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the final, complete and exclusive statement of the terms of the agreement between the Parties with respect to the subject matter of this Agreement, and this Agreement supersedes all

previous oral or written negotiations, discussions and agreements between the Parties, and no parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement. No Party has been induced to enter into this Agreement, by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

O. Exhibits. Exhibits A – J, identified as follows, are attached to this Agreement and are incorporated in this Agreement as though set forth in full:

A. Legal Description of Property

B. Depiction of Property and Site Map

C. Intentionally omitted

D. List of Development Impact Fees and Rates

E. Intentionally omitted

F. List of Legal Entities Defined as "Developer"

G. Intentionally omitted

H. Intentionally omitted

I. Form of TUMF Program Credit Agreement

J. City's Goals and Policies for District Formation

P. Counterpart Signature Pages. For convenience the Parties may execute and acknowledge this Agreement in counterparts and when the separate signature pages are attached to this Agreement, shall constitute one and the same complete agreement.

Q. Authority to Execute. Developer warrants and represents that to its knowledge as of the Reference Date: (i) it is duly organized and existing; (ii) it is duly authorized to execute and deliver this Agreement; (iii) by so executing this Agreement, Developer is formally bound to the provisions of this Agreement; (iv) Developer's entering into and performance of its obligations set forth in this Agreement do not violate any provision of any other agreement to which Developer is bound; and (v) there is no existing or threatened litigation or legal proceeding of which Developer is aware that could prevent Developer from entering into or performing its obligations set forth in this Agreement.

R. No Brokers. Each of City and Developer represents to the other Party that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees or finder's fees that may accrue by means of this Agreement, and agrees to hold harmless the other Party from the commissions or fees as are alleged to be due from the Party making the representations.

S. Subsequent Amendment to Authorizing Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Act in effect as of the Effective Date. Accordingly, notwithstanding any other provision in this Agreement, to the extent that subsequent amendments to the Development Agreement Act would affect the provisions of this Agreement, the amendments shall not be applicable to this Agreement unless necessary for this Agreement to be enforceable or required by law, or unless this Agreement is modified pursuant to the provisions set forth in this Agreement and Government Code Section 65868 as in effect on the Effective Date.

T. Interpretation and Governing Law. The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. This Agreement and any dispute arising under this Agreement shall be governed and interpreted in accordance with the laws of the State of California. The Parties understand and agree that this Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of City, and in particular, City's police powers. In this regard, the Parties understand and agree that this Agreement shall not be deemed to constitute the surrender or abnegation of City's governmental powers over the Property.

U. No Joint and Several Liability. At any time that there is more than one Developer, no breach of this Agreement by a developer shall constitute a breach by any other developer. Any remedy, obligation, or liability, including, but not limited to, the obligations to defend and indemnify City, arising by reason of the breach shall be applicable solely to the Developer that committed the breach. However, City shall send a copy of any notice of violation to all Developers, including those not in breach. In addition, and except as provided in Section 3.D., a default by any Transferee shall only affect that portion of the Property owned by the Transferee and shall not cancel or diminish in any way Developer's rights under this Agreement with respect to any portion of the Property not owned by the Transferee. The Transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by the Transferee, and any amendment to this Agreement between City and a Transferee shall only affect the portion of the Property owned by the Transferee.

[*INTENTIONALLY LEFT BLANK; SIGNATURES ON NEXT PAGE*]

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the Reference Date.

"DEVELOPER"

_____,
a _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

"CITY"

CITY OF CALIMESA,
a California municipal corporation

_____
Jeffrey Hewitt, Mayor

ATTEST:

_____
Darlene Gerdes, City Clerk

APPROVED AS TO FORM:
RICHARDS WATSON & GERSHON

_____
Kevin G. Ennis, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

DEPICTION OF PROPERTY AND SITE MAP

EXHIBIT C

INTENTIONALLY OMITTED

EXHIBIT D

LIST OF DEVELOPMENT IMPACT FEES & RATES

EXHIBIT E

INTENTIONALLY OMITTED

EXHIBIT F

LIST OF LEGAL ENTITIES DEFINED AS "DEVELOPER"

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H

INTENTIONALLY OMITTED

EXHIBIT I

FORM OF IMPROVEMENT AND CREDIT/ REIMBURSEMENT AGREEMENT

TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

EXHIBIT J

CITY'S GOALS AND POLICIES FOR DISTRICT FORMATION

INTRODUCTION

Section 53312.7(a) of the California Government Code requires that pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act") the City of Calimesa (the "City") consider and adopt local goals and policies concerning the use of the Act prior to the initiation of proceedings to establish a new community facilities district ("CFD") under the Act. The following goals and policies are intended to meet the minimum requirements of the Act, and may be amended or supplemented by resolution of the City Council at any time.

GOALS

Except as otherwise provided, only those public improvements that benefit the particular development but also provide a community-wide benefit at large will be considered for financing. Such improvements include, but are not limited to, trunk water, sanitary and storm sewer and related facilities, bridges, major collector or "spine" streets, including related landscaping and lighting, parks, trails, and other recreational facilities, community centers, and fire stations. Unless specifically approved by the City Council, whether through its approval of a development agreement or otherwise, in-tract utilities, streets, landscaping and lighting serving individual properties will not be financed in new development, nor will the acquisition of rights-of-way, lands and easements for public improvements for new development be financed.

The City shall make the determination as to whether a proposed district shall proceed under the provisions of the California assessment laws or the Act. The City may confer with consultants and the applicant to learn of any unique CFD requirements such as facilities serving the regional area prior to making any final determination.

All City and consultant costs incurred in the evaluation of new CFD applications shall be paid by the applicant(s) by advance deposit. The City shall not incur any non-reimbursable expense for processing CFDs. Expenses not chargeable to the CFD shall be borne by the applicant.

ELIGIBLE PUBLIC FACILITIES AND SERVICES

Generally, the improvements eligible to be financed by a CFD must have a useful life of at least five (5) years. In some cases, up to five percent of the proceeds of an issue may be used for privately-owned facilities owned and operated by a privately-owned public utility. The development or redevelopment proposed within a CFD must be consistent with the City's general plan and must have received any required legislative approvals such as zoning or specific plan approvals prior to the issuance of public debt. A CFD shall not vest any rights to future land use on any properties, including those that are responsible for paying special taxes.

The list of eligible public facilities include, but are not limited to, the types of facilities specified in Government Code section 53313.5, as it currently exists, or may hereafter be amended.

The funding of public facilities to be owned and operated by public agencies other than the City shall be considered on a case-by-case basis. If the proposed financing is consistent with a public facilities financing plan approved by the City, or the proposed facilities are otherwise consistent with approved land use plans for the property, the City shall consider entering into a joint community facilities agreement or a joint exercise of powers agreement in order to finance these facilities.

The City will consider on a case-by-case basis CFDs established for the provisions of services eligible to be funded under the Act. Eligible services are as specified in the Act.

PRIORITIES FOR CFD FINANCING UNDER THE ACT

Priority for CFD financing shall be given to public facilities which: (a) are necessary for economic development, or (b) are otherwise incident to an economic development project. If appropriate, the City shall prepare a public facilities financing plan as a part of the specific plan or other land use document that identifies the public facilities required to serve a project, and the type of financing to be utilized for each facility.

CREDIT QUALITY REQUIREMENTS FOR CFD BOND ISSUES

It is the policy of the City to comply with all provisions of the Act including, but not limited to, Section 53345.8, as such Section may be amended from time to time. It is the goal of the City to conform, as nearly as practicable, to the California Debt and Investment Advisory Commission's Appraisal Standards for Land-Secured Financings, as such standards may be amended from time to time, provided, however, that this City Council may additionally amend such standards from time to time as it deems necessary and reasonable, in its own discretion, to provide needed public improvements within the City, while still accomplishing the goals set forth herein.

Unless otherwise specifically approved by the City Council as provided in Section 53345.8(b) or (c) of the Act, the district property value-to-lien ratio shall be at least 3:1 after calculating the value of the public facilities to be financed, and considering any prior or pending special taxes or assessment liens. The City may require a higher value-to-lien ratio in its discretion, in consideration of current market and related conditions.

Property value may be based on either an appraisal or on assessed values as indicated on the county assessor's tax roll. The City shall select the appraiser, and the appraisal shall be based on standards promulgated by the State of California and otherwise determined applicable by City staff and consultants. The appraisal must be dated within three months of the date the bonds are issued. The public lien amount shall include the bond issue currently being sold plus any public indebtedness secured by a lien on real property currently existing against the properties to be taxed.

Less than a three to one property value to public lien ratio, excessive tax delinquencies, or projects of poor economic viability may cause the City to disallow the sale of bonds or require credit enhancement prior to bond sale. The City may consider exceptions to the above policies for bond issues that do not represent an unusual credit risk, either due to credit enhancement or other reasons specified by the City, and which otherwise provide extraordinary public benefits.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution, in a form and upon terms and conditions satisfactory to the City. Any security required to be provided by the applicant may be discharged by the City upon the opinion of a qualified appraiser, retained by the City, that a value-to-lien ratio of three to one has been attained per land use category, including any overlapping special assessment or special tax liens.

As an alternative to providing other security, the applicant may request that a portion of the bond proceeds be placed in escrow with a corporate agent in an amount sufficient to assure a value-to-lien ratio of at least three to one on the outstanding proceeds. The proceeds shall be released at such times and such amounts as may be necessary to assure a value-to-lien ratio of at least three to one per land use category, including any overlapping special assessment or special tax liens.

DISCLOSURE REQUIREMENTS FOR PROSPECTIVE PROPERTY PURCHASERS

a. Disclosure Requirements for Developers. Developers who are selling lots or parcels that are within a CFD shall provide disclosure notice to prospective purchasers that comply with all of the requirements set forth in Section 53341.5 of the Government Code. The disclosure notice must be provided to prospective purchasers of property at or prior to the time the contract or deposit receipt for the purchase of

property is executed. Developers shall keep an executed copy of each disclosure document as evidence that disclosure has been provided to all purchasers of property within a CFD.

b. Disclosure Requirements for the Resale of Lots. Pursuant to Section 53340.2 of the Act, the City Finance Department shall provide a notice of special taxes to sellers of property (other than developers), which will enable them to comply with their notice requirements under Section 1102.6 of the Civil Code. The City shall provide this notice within five working days of receiving a written request for the notice. A reasonable fee may be charged for providing the notice, not to exceed any maximum fee specified in the Act.

EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES

Special tax formulas for CFDs shall provide for minimum special tax levels which satisfy the following: (a) 110 percent debt service coverage for all CFD bonded indebtedness, (b) the reasonable and necessary annual administrative expenses of the CFD, and (c) amounts equal to the differences between expected earnings on any escrow fund and the interest payments due on bonds of the CFD. Additionally, the special tax formula may provide for the following: (a) any amounts required to establish or replenish any reserve fund established in association with the indebtedness of the CFD, (b) the accumulation of funds reasonably required for future debt service, (c) amounts equal to projected delinquencies of special tax payments, (d) the costs of remarketing, credit enhancement and liquidity facility fees, (e) the cost of acquisition, construction, furnishing or equipping of facilities, (f) lease payments for existing or future facilities, (g) costs associated with the release of funds from an escrow account, and (h) any other costs or payments permitted by law. In structuring the special tax, projected annual interest earnings on bond reserve funds may not be included as revenue for purposes of the calculation.

The special tax formula shall be reasonable and equitable in allocating public facilities' costs to parcels within the CFD. Exemptions from the special tax may be given to parcels which are publicly owned, are held by a property owners' association, are used for a public purpose such as open space or wetlands, are affected by public utility easements making impractical their utilization for other than the purposes set forth in the easements, or have insufficient value to support bonded indebtedness.

The maximum annual special tax, together with ad valorem property taxes, special assessments or special taxes for an overlapping financing district, including such potential taxes and assessments relating to authorized but unissued debt of public entities other than the City (collectively, the "Overlapping Debt Burden"), in relation to the expected assessed value of each parcel upon completion of the private improvements to the parcel is of great importance to the City in evaluating the proposed financing.

For residential parcels, the Overlapping Debt Burden at the time of bond issuance shall not exceed two percent (2.0%) of the projected assessed value of each improved parcel within the district. As it pertains to commercial, industrial, or other parcels within the district, the City reserves the right to exceed the two percent (2%) limit if, in the City's sole discretion, it is fiscally prudent. The City, in its discretion, may allow an annual escalation factor on parcels within a district.

Special taxes will only be levied on an entire County Assessor's parcel, and any allocation of special tax liability of a County Assessor's parcel to leasehold or possessory interest in the fee ownership of such County Assessor's parcel shall be the responsibility of the fee owner of such parcel (except where the City is the fee owner of the parcel and has leased the parcel pursuant to a lease with a term of at least 5 years, in which case the lessee shall have the responsibility for the special tax liability) and the City shall have no responsibility therefore and has no interest therein. Failure to pay or cause to be paid any special taxes in full when due, shall subject the entire parcel to foreclosure in accordance with the Act.

The City shall retain a special tax consultant to prepare a report which: (a) recommends a special tax for the proposed CFD, and (b) evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable) and other related expenditures. Such analysis shall also address the resulting aggregate tax burden of all proposed special taxes plus existing special taxes, ad valorem taxes and assessments on the properties within the CFD.

APPRAISALS

The definitions, standards and assumptions to be used for appraisals shall be determined by City on a case-by-case basis, with input from City consultants and CFD applicants, and by reference to relevant materials and information promulgated by the State of California, including the Appraisal Standards for Land-Secured Financings prepared by the California Debt and Investment Advisory Commission. In any event, the value-to-lien ratio shall be determined based upon an appraisal by an independent Member Appraisal Institute ("M.A.I.") appraiser of the proposed CFD. The appraisal shall be coordinated by and under the direction of the City. All costs associated with the preparation of the appraisal report shall be paid by the entity requesting the establishment of the CFD through the advance deposit mechanism.

ABSORPTION STUDY

An absorption study of any proposed development project may be required for land secured financing. The absorption study shall be used (A) as basis for verification that sufficient revenues can be produced; and B) to determine if the public financing of the public facilities is appropriate given the timing of the development. Additionally, the projected absorption rates will be provided to the appraiser for use in the appraisal required in Section V, above.

TERMS AND CONDITIONS OF BONDS

The City shall establish all terms and conditions of the bonds. The City will control, manage and invest all CFD issued bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or rating of the City. These security measures could include a combination of credit enhancement, foreclosure covenant, special reserve fund or deposits and/or a contractual commitment by the proponents and successors to pay the special taxes or assessments during the initial development stages of the development project. The City has the sole discretion to determine the types of credit enhancement, foreclosure covenant and reserve fund that may be required.

All statements and material related to the sale of bonds shall emphasize and state that neither the faith, credit nor the taxing power of the City is pledged to security or repayment of the Bonds. The sole source of pledged revenues to repay CFD bonds are special taxes, bond proceeds and reserve funds held under the bond indenture, and the proceeds of foreclosure proceedings and additional security instruments provided at the time of bond issuance.

The City is under no obligation to issue tax-exempt debt. The ability to issue tax-exempt debt depends upon the particular facts and circumstances of each CFD. If the City, in its sole discretion determines to issue tax-exempt debt, the developer must agree to cooperate in connection with any covenants or other requirements of state and/or federal tax law that may be necessary in order for the City to issue tax-exempt debt.

CFD COST DEPOSITS AND REIMBURSEMENTS

All City and consultant costs incurred in the evaluation of CFD applications and the establishment of CFDs will be paid by the entity requesting the establishment of the CFD by advance deposit. The City shall determine the amount of the initial advance deposit. The City shall not incur any non-reimbursable expenses for processing and administering CFDs. Expenses not chargeable to the CFD shall be directly borne by the applicant.

The initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with CFD review and implementation shall accompany each petition for formation of a CFD. If additional funds are needed to off-set costs and expenses incurred by the City, the City shall make written demand upon the applicant for such funds. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

The City shall not accrue or pay any interest on any portion of the deposit refunded to the applicant or the costs and expenses reimbursed to the applicant. Neither the City nor the CFD shall be required to reimburse the applicant or property owner from any funds other than the proceeds of bonds issued by the CFD.

CONTINUING DISCLOSURE

Landowners owning land within any CFD, and which are responsible for twenty percent (20%) or more in the aggregate of the special taxes or assessments, must agree to provide (A) initial financial disclosure at the time of issuance of any bonds relating to such CFD; and (B) annual financial disclosure as required under Rule 15c2-12 of the Securities Exchange Commission until the time at which the aggregate special tax of such landowner is less than 20%. The City may require a higher or lower threshold than 20% of the aggregate special taxes, depending on the appropriateness due to the facts and circumstances of the financing.

USE OF CONSULTANTS

The City shall select all consultants necessary for the formation of the CFD and the issuance of bonds, including the underwriter(s), bond counsel, financial advisor, appraiser, absorption consultant, and the special tax consultant. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.

PROCESS

The Planning Department shall work with applicants in the preliminary stages of deciding whether to form a CFD and throughout the process of formation. The Engineering Department shall be responsible for cost estimates for infrastructure improvements and maintenance costs: The Public Works Department shall be responsible for the review and acceptance of infrastructure improvements and administration of maintenance programs.

EXCEPTIONS TO THESE POLICIES

The City may find in limited and exceptional instances that a waiver to any of the above stated policies is reasonable given identified special City benefits to be derived from such waiver. Such waivers only will be granted by action of the City Council.

MODIFICATION OF THESE POLICIES

The City Council reserves the right to modify or amend the policies.